

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 18

The Montana Administrative Register (MAR), a twice-monthly publication, has three sections. The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted. The rule section indicates that the proposed rule action is adopted and lists any changes made since the proposed stage. The interpretation section contains the attorney general's opinions and state declaratory rulings. Special notices and tables are found at the back of each register.

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Administrative Rules Bureau at (406) 444-2055.

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BEFORE THE STATE AUDITOR AND COMMISSIONER OF INSURANCE
OF THE STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING ON
adoption of New Rule I) PROPOSED ADOPTION
pertaining to prohibition of)
discretionary clauses in)
insurance policy forms)

TO: All Concerned Persons

1. On November 6, 2002, at 9:30 a.m., a public hearing will be held in the 2nd floor conference room, State Auditor's Office, 840 Helena Avenue, Helena, Montana, to consider the proposed adoption of New Rule I pertaining to the prohibition of the use of discretionary clauses in insurance policy forms.

2. The State Auditor's Office will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the office no later than 5:00 p.m., October 23, 2002, to advise us as to the nature of the accommodation needed. Please contact Pamela Weitz, State Auditor's Office, 840 Helena Ave., Helena, MT 59601; telephone (406) 444-1744; Montana Relay 1-800-332-6145; TDD (406) 444-3246; facsimile (406) 444-3497 or e-mail to pweitz@state.mt.us.

3. The proposed new rule provides as follows:

RULE I DISCRETIONARY CLAUSES PROHIBITED (1) No policy, contract, certificate or agreement offered or issued in this state may contain a provision purporting to reserve discretion to the insurance carrier, health service corporation, or health maintenance organization, to interpret or apply the terms of the contract, or to provide standards of interpretation or review that are inconsistent with the laws of this state, including legal principles generally applicable to interpretation and application of insurance policy language.

(2) The provisions of this rule will apply to all insurance forms. A form containing a discretionary clause that is filed after the effective date of the rule will be disapproved and returned to the carrier for correction. A form containing a discretionary clause that has previously been filed with the commissioner must be refiled with the commissioner in conformance with this rule no later than January 1, 2003. Alternatively, an endorsement striking the discretionary clause from the form must be filed with the commissioner no later than January 1, 2003.

AUTH: 33-1-313, MCA
IMP: 33-1-501, MCA

4. REASONABLE NECESSITY STATEMENT: New Rule I is necessary in order to clarify that discretionary clauses will be disapproved by the Commissioner pursuant to 33-1-502(2), MCA, on the grounds that such clauses are misleading and deceptively affect the risk purported to be assumed in the general coverage on an insurance contract.

This rule is based upon the National Association of Insurance Commissioners model act, except that the prohibition includes all insurance contracts rather than only health insurance contracts.

5. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Pamela Weitz, Paralegal, State Auditor's Office, 840 Helena Avenue, Helena, MT 59601, or by e-mail to pweitz@state.mt.us, and must be received no later than November 13, 2002.

6. Elizabeth L. Griffing has been designated to preside over and conduct the hearing.

7. The State Auditor's Office maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies whether the person wishes to receive notices regarding insurance rules, securities rules, or both. Such written request may be mailed or delivered to the State Auditor's Office, 840 Helena Avenue, Helena, MT 59601, faxed to (406) 444-3497, e-mailed to dsautter@state.mt.us, or may be made by completing a request form at any rules hearing held by the State Auditor's Office.

8. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

JOHN MORRISON, State Auditor
and Commissioner of Securities

By: /s/ Angela Caruso
Angela Caruso
Deputy Insurance Commissioner

By: /s/ Elizabeth L. Griffing
Elizabeth L. Griffing
Rules Reviewer

Certified to the Secretary of State on September 16, 2002.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the)
proposed adoption of new rule)
I criminal history background)
check, new rule II substitute)
teachers, new rules III)
through XXVIII relating)
to teacher license)
classification, new rule)
XXIX definition of "immoral)
conduct," new rule XXX)
investigation, new rule)
XXXI reporting of the)
surrender, denial, revocation)
or suspension of a license,)
the amendment of ARM)
10.55.602, 10.55.604,)
10.55.702 through 10.55.705,)
10.55.707 and 10.55.710)
relating to accreditation,)
ARM 10.57.101, 10.57.102,)
10.57.104, 10.57.107,)
10.57.110, 10.57.112,)
10.57.201, 10.57.204,)
10.57.209, 10.57.215 through)
10.57.218, 10.57.220,)
10.57.301, 10.57.501,)
10.57.601 through 10.57.605)
relating to teacher)
certification and the)
amendment and transfer of)
ARM 10.57.701 through)
10.57.703 relating to hearing)
procedures, the transfer)
of ARM 10.57.407 and)
10.57.801 and the repeal of)
ARM 10.57.103, 10.57.106,)
10.57.108, 10.57.202,)
10.57.203, 10.57.211A,)
10.57.213, 10.57.219,)
10.57.302 and 10.57.401)
through 10.57.406 relating)
to teacher certification)

NOTICE OF PUBLIC HEARING
ON THE PROPOSED ADOPTION,
AMENDMENT, TRANSFER AND
REPEAL OF RULES

TO: All Concerned Persons

1. On October 22, 2002 at 9:00 a.m. a public hearing will be held in the conference room at the Office of Higher Education, 2500 Broadway, Helena, Montana, to consider the adoption, amendment, transfer and repeal of rules relating to teacher certification.

2. The Board of Public Education will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Public Education no later than 5:00 p.m. on October 8, 2002 to advise us of the nature of the accommodation that you need. Please contact Steve Meloy, P.O. Box 200601, Helena, MT 59620-0601, telephone: (406) 444-6576, FAX: (406) 444-0847, e-mail: smeloy@bpe.montana.edu.

3. Statement of Reasonable Necessity: The Board of Public Education has determined that it is reasonable and necessary to adopt, amend, transfer and repeal the following rules. These proposals are the final product of a two year review by a Board appointed task force. The task force was comprised of persons representing all of the major partners in education in Montana.

The task force substantially reviewed the rules governing educator certification including items not considered since the Constitutional Convention in 1972. Additionally, the certification rules have not been specifically modified since 1972. The proposals contained in this notice affect changes in education since 1972 as well as aligning certification rules and the accreditation rules found in Chapter 55.

A central purpose in adoption and amendment of these rules is to ensure that educators are highly qualified and quality teaching is not compromised to the detriment of Montana's school children. The proposed changes also provide specific direction to the Board of Public Education and the Office of Public Instruction as they handle all issues involving educator licensure that were previously handled on a case by case basis.

The following is a summary of the major changes proposed to the accreditation and certification rules:

a. The references to "teacher certification" are being changed to "educator licensure".

b. The term "accredited college or university" is being changed to specify those institutions accredited by the National Council for Accreditation of Teacher Education or institutions approved by a state board of education.

c. The rule concerning substitute teachers is being repealed and a new rule adopted that provides standards for substitute teachers.

d. The Board is proposing to adopt a new rule requiring a criminal background check for all applicants for initial licensure in Montana and those seeking to reinstate a lapsed license.

e. The rule ARM 10.57.211A adopted by the Board in May concerning individuals applying for licensure with out-of-state teaching licenses is being made permanent and is incorporated in ARM 10.57.201.

f. The requirement that an educator submit verification of one year's teaching experience in order to renew their

license has been eliminated.

g. Recency requirements for those individuals applying for initial licensure whose degrees are more than five years old have been standardized to eight semester credits for all classes of licensure.

h. Sub-chapter 4 concerning classifications of educator licenses has been repealed and new rules proposed to be adopted that separate and clarify the requirements for the different classifications, levels of licensure and endorsements.

i. Minor changes for consistency and changes in format and style have been made to sub-chapters 6, 7 and 8 and the sub-chapters have been combined into sub-chapter 6.

j. The accreditation rules are being amended to include a provision for a licensed Montana teacher to teach a course for which they are not endorsed, if they are enrolled in an internship program at a Montana college to receive a minor in that field. The rules also provide for internship programs for superintendents and principals.

4. The proposed new rules provide as follows:

NEW RULE I CRIMINAL HISTORY BACKGROUND CHECK (1) The National Child Protection Act of 1993, as amended, (codified at 42 United States Code sections 5119a and 5119c) (the "Act") authorizes a state and national criminal history background check to determine the fitness of an employee, volunteer, or other person with unsupervised access to children, the elderly, or individuals with disabilities. The background check contemplated herein shall be made pursuant to and with the support of the Act. The purpose of this rule is to support the superintendent of public instruction's duty to evaluate a provider's moral and professional character and to determine whether a provider, as defined herein and in the Act, has been convicted of a crime that bears upon the provider's fitness to have responsibility for the safety and well being of children.

(2) As applied to the Act and used in this rule, the following definitions shall apply:

(a) "authorized agency" means the Montana department of justice;

(b) "identification document" means a document made or issued by or under the authority of the United States government, a state, political subdivision of a state, a foreign government, political subdivision of a foreign government, an international governmental or an international quasi-governmental organization which, when completed with information concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals;

(c) "national criminal history background check" means a report generated from the criminal history record system maintained by the United States federal bureau of investigation based on fingerprint identification or any other

method of positive identification;

(d) "provider" means those persons seeking educator licensure in Montana and listed in (3);

(e) "qualified entity" means the superintendent of public instruction.

(3) Except as otherwise provided for herein, each of the following persons (the "applicant") shall provide to the superintendent of public instruction information and material sufficient to obtain a fingerprint-based national criminal history background check (a "background check"):

(a) any applicant for initial Montana educator licensure;

(b) any person seeking emergency authorization of employment pursuant to 20-4-110, MCA and ARM 10.57.107; and

(c) any applicant seeking to reinstate a lapsed, revoked, or suspended educator license.

(4) The applicant shall bear the costs of the background check.

(5) The superintendent of public instruction shall not issue to an applicant a Montana educator license pursuant to 20-4-101, et seq., MCA, until the background check has been completed and the results of the background check have been delivered to and reviewed by the superintendent of public instruction.

(6) The superintendent of public instruction may accept the results of a background check conducted for the Montana university system or a private college or university in Montana of a student, provided the background check was completed no more than two years before the applicant submits a license application to the superintendent of public instruction.

(7) The superintendent of public instruction shall not request a background check of a provider hereunder unless the provider first provides a set of fingerprints and completes and signs a statement that:

(a) contains the name, address, and date of birth appearing on a valid identification document of the provider;

(b) the provider has not been convicted of a crime and, if the provider has been convicted of a crime, contains a description of the crime and the particulars of the conviction;

(c) notifies the provider that the entity may request a background check hereunder;

(d) notifies the provider of the provider's rights under (8); and

(e) notifies the provider that prior to the completion of the background check the qualified entity may choose to deny the provider unsupervised access to a person to whom the qualified entity provides care.

(8) Each provider who is the subject of a background check is entitled to:

(a) obtain a copy of any background check report; and

(b) challenge the accuracy and completeness of any information contained in any such report and obtain a prompt

determination as to the validity of such challenge before a final determination is made by the authorized agency.

(9) The authorized agency shall:

(a) upon receipt of a background check report lacking disposition data, conduct research in whatever state and local record keeping systems are available in order to obtain complete data; and

(b) make a determination whether the provider has been convicted of, or is under pending indictment for, a crime that bears upon the provider's fitness to have responsibility for the safety and well being of children, the elderly, or individuals with disabilities and shall convey that determination to the qualified entity.

(10) Conviction, including conviction following a plea of nolo contendere, a conviction in which the sentence is suspended or deferred, or any other adjudication treated by the court as a conviction, may be considered by the superintendent of public instruction in the certification process if the conviction was for a sexual offense, a crime involving violence, the sale of drugs, or theft, or any other crime meeting the criteria of Title 37, chapter 1, part 2, MCA.

AUTH: Sec. 20-4-102, MCA

IMP: Sec. 20-4-103, 20-4-104, MCA

NEW RULE II SUBSTITUTE TEACHERS (1) Substitute teachers may be used for extended teacher absences under the following conditions:

(a) In cases where a regular, licensed teacher under contract is temporarily unable, by reason of illness or for other reasons approved by the school district board of trustees, to fulfill the teacher's duties, substitute teachers may be employed to carry on the duties of that teacher's position for a period not to exceed 35 consecutive teaching days. Such substitutes need not hold a current license, but preference shall be given to those substitutes who are properly licensed.

(b) If the absence of the regular, licensed or authorized teacher continues for more than 35 teaching days, the substitute may be placed under contract if licensed or the board of trustees shall place a licensed teacher under contract. If the board of trustees makes a written declaration to the superintendent of public instruction that no licensed teacher is available, the district shall pursue the employment of a teacher authorized under the provisions of ARM 10.57.707.

(2) Any non-licensed substitute teacher shall complete a minimum of three hours of training, as approved by the school district board of trustees.

(3) Any non-licensed substitute teacher must have received a high school diploma or have attained a passing score on the general education development assessment.

(4) A district that employs a non-licensed substitute

teacher must conduct a fingerprint-based background check of that individual according to the following procedures:

(a) The non-licensed substitute teacher must present a complete set of fingerprints to a qualified law enforcement agency to be submitted to the school district.

(b) The district shall not employ the non-licensed substitute teacher until state and federal authorities have reported the results of the background check or until the district has conducted a reference check of the individual.

(c) The district shall accept the report of a previous fingerprint-based background check if it is submitted by a Montana university or college for a student currently or formerly enrolled in an accredited Montana professional educator program. The report shall not be accepted if it was completed more than two years prior to the date of submission.

(d) The district shall consider the information obtained from the results of the fingerprint-based background check under the provisions of Title 37, chapter 1, part 2, MCA, governing the licensure of criminal offenders and under 20-4-110, MCA. Conviction, including conviction following a plea of nolo contendere, a conviction in which the sentence is suspended or deferred, or any other adjudication treated by the court as a conviction, may be considered by the district as grounds for removal from the classroom if the conviction was for a sexual offense, theft, or any other crime meeting the criteria of Title 37, chapter 1, part 2, MCA.

(5) The requirements of this rule may be waived by the trustees in whole or in part, if the non-licensed substitute has previous teaching or substitute teaching experience in an accredited public school in Montana prior to [the effective date of this rule].

AUTH: Sec. 20-4-102, MCA

IMP: Sec. 20-4-102, MCA

NEW RULE III CLASS 2 STANDARD TEACHER'S LICENSE

(1) A class 2 standard teacher's license shall be valid for a term of five years.

(2) To obtain a class 2 standard teacher's license an applicant must have a bachelor's degree and have completed an accredited professional educator preparation program.

(3) A class 2 standard teacher's license shall be renewable pursuant to the requirements of ARM 10.57.215.

(4) A lapsed class 2 standard teacher's license may be reinstated by showing verification of:

(a) 60 renewal units, 40 of which must be earned by college credit, earned during the five-year period preceding the validation date of the new license; or

(b) 120 renewal units, 80 of which must be earned by college credit, earned during the nine-year period preceding the validation date of the new license.

(5) An educator who has not earned renewal units as provided in (4)(a) and (b) and who wishes to reinstate his/her lapsed license must comply with the requirements of ARM

10.57.201 and 10.57.220.

AUTH: Sec. 20-2-121, 20-4-102, MCA

IMP: Sec. 20-4-102, 20-4-103, 20-4-106, 20-4-108, MCA

NEW RULE IV CLASS 1 PROFESSIONAL TEACHER'S LICENSE

(1) A class 1 professional teacher's license shall be valid for a period of five years.

(2) To obtain a class 1 professional teacher's license an applicant must have:

(a) a master's degree or one year of study consisting of at least 30 graduate semester credits beyond the bachelor's degree in professional education or an endorsable teaching area(s); and

(b) verification of three years of successful teaching experience or the equivalent.

(3) A class 1 professional teacher's license shall be renewable pursuant to the requirements of ARM 10.57.215.

(4) A lapsed class 1 professional teacher's license may be reinstated by showing verification of:

(a) 60 renewal units earned during the five-year period preceding the validation date of the new license; or

(b) 120 renewal units earned during the nine-year period preceding the validation date of the new license.

(5) An educator who has not earned renewal units as provided in (4)(a) and (b) and who wishes to reinstate his/her lapsed license must comply with the requirements of ARM 10.57.201 and 10.57.220.

AUTH: Sec. 20-4-102, MCA

IMP: Sec. 20-4-106, 20-4-108, MCA

NEW RULE V CLASS 1 AND 2 ENDORSEMENTS

(1) To obtain an elementary endorsement, an applicant must provide verification of completion of an accredited elementary teacher education program to include student teaching or university supervised teaching experience.

(2) To obtain a secondary endorsement the applicant must provide verification of at least:

(a) 16 semester credits in a professional educator preparation program, including student teaching or an appropriate college waiver; and

(b) 30 semester credits in an approved major and 20 semester credits in an approved minor; or

(c) 40 semester credits in an extended major.

(3) To obtain a K-12 endorsement, the applicant must provide verification of training in both elementary and secondary curriculum.

(4) Subject field endorsements must be in areas approved for endorsement by the board of public education.

AUTH: Sec. 20-4-102, MCA

IMP: Sec. 20-4-106, 20-4-108, MCA

NEW RULE VI CLASS 3 ADMINISTRATIVE LICENSE (1) A class 3 administrative license shall be valid for a period of five years.

(2) To obtain a class 3 administrative license an applicant must provide verification of a master's degree in an accredited school administration program or the equivalent and must qualify for one of the endorsements set forth in [NEW RULE VII through NEW RULE XII].

(3) A class 3 administrative license shall be renewed upon verification of 60 renewal units earned during the valid term of the license.

(4) A lapsed class 3 administrative license may be reinstated by showing verification of:

(a) 60 renewal units earned during the five-year period preceding the validation date of the new license; or

(b) 120 renewal units earned during the nine-year period preceding the validation date of the new license.

(5) An administrator who has not earned renewal units as provided in (4)(a) and (b) and who wishes to reinstate his/her lapsed license must comply with the requirements of ARM 10.57.201 and 10.57.220.

AUTH: Sec. 20-4-102, MCA

IMP: Sec. 20-4-106, 20-4-108, MCA

NEW RULE VII CLASS 3 ADMINISTRATIVE LICENSE - SUPERINTENDENT ENDORSEMENT (1) To obtain a superintendent endorsement an applicant must provide verification of:

(a) an education specialist degree or doctoral degree in education leadership from an accredited professional educator preparation program as defined in ARM 10.57.102(3) and one year of administrative experience as an appropriately licensed principal or one year of a supervised board of public education approved administrative internship as a superintendent; or

(b) a master's degree in education leadership from an accredited professional educator preparation program or equivalent as determined by the university system to include:

(i) licensure/endorsement as a principal;

(ii) one year of administrative experience as an appropriately licensed principal or one year of a supervised board of public education approved administrative internship as superintendent; and

(iii) a minimum of 18 semester graduate credits, of which 12 must be beyond the master's degree, in the following content areas:

(A) organizational leadership;

(B) instructional leadership;

(C) management to include finance, facilities, law and policy;

(D) personnel and labor relations; and

(E) community and board relations.

AUTH: Sec. 20-4-102, MCA

IMP: Sec. 20-4-106, 20-4-108, MCA

NEW RULE VIII CLASS 3 ADMINISTRATIVE LICENSE - ELEMENTARY PRINCIPAL ENDORSEMENT (1) To obtain an elementary principal endorsement an applicant must provide verification of:

(a) a minimum of three years of successful experience as an appropriately licensed and assigned teacher at the elementary level; and

(b) a master's degree in education leadership from an accredited professional educator preparation program as defined in ARM 10.57.102(3); or

(c) a master's degree from any accredited professional educator preparation program and a minimum of 24 semester credits in the following content areas:

(i) school leadership;

(ii) instructional leadership to include supervision and elementary curriculum;

(iii) management to include finance and law; and

(iv) school and community relations.

AUTH: Sec. 20-4-102, MCA

IMP: Sec. 20-4-106, 20-4-108, MCA

NEW RULE IX CLASS 3 ADMINISTRATIVE LICENSE - SECONDARY PRINCIPAL ENDORSEMENT (1) To obtain a secondary principal endorsement an applicant must provide verification of:

(a) a minimum of three years of successful experience as an appropriately licensed and assigned teacher at the secondary level; and

(b) a master's degree in educational leadership from an accredited professional educator preparation program as defined in ARM 10.57.102(3); or

(c) a master's degree from any accredited professional educator preparation program and a minimum of 24 graduate semester credits in the following content areas:

(i) school leadership;

(ii) instructional leadership to include supervision and secondary curriculum;

(iii) management to include finance and law; and

(iv) school and community relations.

AUTH: Sec. 20-4-102, MCA

IMP: Sec. 20-4-106, 20-4-108, MCA

NEW RULE X CLASS 3 ADMINISTRATIVE LICENSE - K-12 PRINCIPAL ENDORSEMENT (1) To obtain a K-12 principal endorsement an applicant must provide verification of:

(a) a master's degree in educational leadership from an accredited professional educator preparation program as defined in ARM 10.57.102(3);

(b) full eligibility for an elementary or a secondary principal endorsement or current endorsement as a Montana elementary or secondary principal;

(c) a minimum of three years of successful experience as an appropriately licensed and assigned teacher at any level within K-12; and

(d) at least six graduate semester credits in educational leadership and curriculum at the elementary level, if eligible at the secondary level, or at least six graduate credits in educational leadership and curriculum at the secondary level, if eligible at the elementary level.

AUTH: Sec. 20-4-102, MCA

IMP: Sec. 20-4-106, 20-4-108, MCA

NEW RULE XI CLASS 3 ADMINISTRATIVE LICENSE - SUPERVISOR ENDORSEMENT

(1) This administrative endorsement is issued in specific fields such as math, music, and school counseling, or in general areas such as elementary education, secondary education and curriculum development. This endorsement may be issued to applicants who submit verification:

(a) of successful completion, at an accredited institution of higher learning, of a master's degree in the area requested for endorsement;

(b) that the applicant meets eligibility requirements for a class 1 or class 2 teaching license endorsed in the field of specialization;

(c) of three years of successful experience as an appropriately licensed and assigned teacher;

(d) of at least 14 graduate semester credits in education or the equivalent to include:

(i) general school administration;

(ii) administration in the specific area to be endorsed;

(iii) supervision of instruction;

(iv) basic school finance; and

(v) school law; and

(e) of a supervised practicum/internship (minimum of four semester credits or appropriate waiver). The recommendation of the appropriate official(s) is required.

AUTH: Sec. 20-4-102, MCA

IMP: Sec. 20-4-106, 20-4-108, MCA

NEW RULE XII CLASS 3 ADMINISTRATIVE LICENSE - SPECIAL EDUCATION SUPERVISOR ENDORSEMENT

(1) This administrative endorsement is issued in the specific field of special education. This endorsement may be issued to applicants who submit verification of:

(a) successful completion, at an accredited institution of higher learning, of a master's degree in special education or a master's degree in special education related services, field of school psychologist, speech language pathologist, audiologist, physical therapist, occupational therapist, registered nurse, clinical social worker, or clinical professional counselor;

(b) full licensure in the field of specialization;

(c) three years of successful experience in an accredited school setting as an appropriately licensed and assigned teacher, or five years of successful experience in an accredited school setting as a fully licensed and assigned related services provider;

(d) at least 14 graduate semester credits in education or the equivalent to include:

(i) general school administration;

(ii) administration in the specific area to be endorsed;

(iii) supervision of instruction;

(iv) basic school finance; and

(v) school law; and

(e) a supervised practicum/internship (minimum of four semester credits or appropriate waiver). The recommendation of the appropriate official(s) is required.

AUTH: Sec. 20-4-102, MCA

IMP: Sec. 20-4-106, 20-4-108, MCA

NEW RULE XIII CLASS 4 CAREER AND VOCATIONAL/TECHNICAL LICENSE (1) A class 4 license is specific to career and vocational/technical education. There are three types of class 4 licenses - class 4A, 4B and 4C.

(2) A class 4 license shall be valid for a period of five years.

(3) A class 4 license shall be renewable pursuant to the requirements of ARM 10.57.215 and the requirements specific to each type of class 4 license.

(4) Recognized occupations eligible for a class 4 license shall be evaluated on an annual basis by the superintendent of public instruction. Current appropriate class 4 career and vocational/technical occupational areas are set forth in ARM 10.57.301(4). Endorsements not on the list of recognized occupations may be retained as long as the holder continues to renew the license.

AUTH: Sec. 20-4-102, MCA

IMP: Sec. 20-4-106, 20-4-108, MCA

NEW RULE XIV CLASS 4A CAREER AND VOCATIONAL/TECHNICAL EDUCATION LICENSE (1) A class 4A license shall be issued to individuals holding a valid Montana secondary level teaching license, but without an appropriate career and vocational/technical education endorsement, and who meet the following minimum requirements:

(a) 10,000 hours of documented work experience or apprenticeship training equal to 10,000 hours in the specific trade in which they are to teach;

(b) for computer information systems or health occupations, an alternative to the above requirement of 10,000 hours work experience may be substituted, as approved by the superintendent of public instruction as follows:

(i) for health occupations an individual may hold a

related health or science education endorsement; and

(A) have completed an approved internship program in a recognized medical setting of a minimum of 200 hours (five weeks); or

(B) hold a current professional license.

(ii) for computer information systems an individual may provide verification of completion of an approved technical program in a recognized training institution and hold a professional license or recognized industry standard certificate.

(2) Class 4A licenses (with a master's degree) shall be renewable by earning 60 renewal units that include the following:

(a) principles and/or philosophy of career and vocational/technical education; and

(b) safety and teacher liability.

(3) Class 4A licenses (with a bachelor's degree) shall be renewable by earning 60 renewal units, 40 of which must be earned through college credit and/or technical studies and include the following:

(a) principles and/or philosophy of career and vocational/technical education; and

(b) safety and teacher liability.

AUTH: Sec. 20-4-102, MCA

IMP: Sec. 20-4-106, 20-4-108, MCA

NEW RULE XV CLASS 4B CAREER AND VOCATIONAL/TECHNICAL EDUCATION LICENSE (1) A class 4B license shall be issued to individuals with a bachelor's degree, but who do not hold a valid Montana secondary level teaching license with the appropriate career and vocational/technical education endorsement.

(2) To obtain a class 4B license an individual must meet the following minimum requirements:

(a) 10,000 hours of documented work experience or apprenticeship training equal to 10,000 hours in the specific trade in which they are to teach; or

(b) for emerging occupations such as computer information systems (e.g., CISCO) or health occupations, an alternative to the above requirement of 10,000 hours work experience may be substituted as approved by the superintendent of public instruction as follows:

(i) verification of recognized industry standard certification or a professional license; and

(ii) 4,000 hours of documented work experience or apprenticeship training equal to 4,000 hours.

(3) Class 4B licenses shall be renewable by earning 60 renewal units, 40 of which must be earned through college credit and/or technical studies and include the following:

(a) principles and/or philosophy of career and vocational/ technical education;

(b) curriculum and instruction in career and vocational/ technical education;

- (c) learning styles/teaching styles, including students with special needs; and
- (d) safety and teacher liability.

AUTH: Sec. 20-4-102, MCA
IMP: Sec. 20-4-106, 20-4-108, MCA

NEW RULE XVI CLASS 4C CAREER AND VOCATIONAL/TECHNICAL LICENSE (1) A class 4C license shall be issued to individuals who hold at least a high school diploma or GED and meet the following minimum requirements:

(a) 10,000 hours of documented work experience or apprenticeship training equal to 10,000 hours in the specific trade in which they are to teach.

(2) The class 4C license shall be renewable by completing 60 renewal units that include the following:

(a) principles and/or philosophy of career and vocational/technical education;

(b) curriculum and instruction in career and vocational/technical education;

(c) learning styles/teaching styles, including serving students with special needs;

(d) safety and teacher liability;

(e) classroom management;

(f) teaching methods; or

(g) career guidance in career and vocational/technical education.

AUTH: Sec. 20-4-102, MCA
IMP: Sec. 20-4-106, 20-4-108, MCA

NEW RULE XVII CLASS 5 PROVISIONAL LICENSE (1) A class 5 provisional license is valid for a term of three years, is not renewable and may not be reinstated.

(2) An applicant for a class 5 provisional license must sign and file with the superintendent of public instruction a plan of professional intent leading to the class 1, 2, 3 or 6 license within three years of the date of the provisional license.

(3) A class 5 provisional license is available with any endorsement normally allowed for class 1, 2, 3 or 6 licenses.

AUTH: Sec. 20-4-102, MCA
IMP: Sec. 20-4-106, 20-4-108, MCA

NEW RULE XVIII CLASS 5 PROVISIONAL LICENSE - ELEMENTARY LEVEL (1) To obtain a class 5 provisional license with an elementary level endorsement, an applicant must provide verification of:

(a) a bachelor's degree from an accredited college or university;

(b) a minimum of 60 semester credits of academic preparation in language arts and literature, history, government and related social science, mathematics, and any

two of the following: art, music, foreign languages, speech, drama, library science or health; and

(c) professional preparation of at least six semester credits to include human growth and development, reading and/or language arts, social studies, and arithmetic.

AUTH: Sec. 20-4-102, MCA

IMP: Sec. 20-4-106, 20-4-108, MCA

NEW RULE XIX CLASS 5 PROVISIONAL LICENSE - SECONDARY LEVEL (1) To obtain a class 5 provisional license with a secondary level endorsement, an applicant must provide verification of:

(a) a bachelor's degree from an accredited college or university;

(b) a minimum of 30 semester credits in an area approved by the board of public education for endorsement; and

(c) professional educator preparation of at least six semester credits.

AUTH: Sec. 20-4-102, MCA

IMP: Sec. 20-4-106, 20-4-108, MCA

NEW RULE XX CLASS 5 PROVISIONAL LICENSE - SUPERINTENDENT ENDORSEMENT (1) To obtain a class 5 provisional license with a superintendent endorsement, an applicant must provide verification of:

(a) a master's degree in education leadership from an accredited professional educator preparation program or equivalent;

(b) eligibility for a class 1, 2, or 5 teaching license at the appropriate level;

(c) verification of three years of appropriately licensed and assigned teaching experience; and

(d) verification of one year of appropriately licensed experience as a principal or one year of a supervised board of public education approved administrative internship as superintendent.

AUTH: Sec. 20-4-102, MCA

IMP: Sec. 20-4-106, 20-4-108, MCA

NEW RULE XXI CLASS 5 PROVISIONAL LICENSE - ELEMENTARY PRINCIPAL ENDORSEMENT (1) To obtain a class 5 provisional license with an elementary principal endorsement, an applicant must provide verification of:

(a) a master's degree from any accredited professional educator preparation program;

(b) eligibility for a class 1, 2, or 5 teaching license at the elementary level; and

(c) verification of three years of successful teaching experience as an appropriately licensed and assigned teacher at the elementary level.

AUTH: Sec. 20-4-102, MCA
IMP: Sec. 20-4-106, 20-4-108, MCA

NEW RULE XXII CLASS 5 PROVISIONAL LICENSE - SECONDARY PRINCIPAL ENDORSEMENT (1) To obtain a class 5 provisional license with a secondary principal endorsement, an applicant must provide verification of:

- (a) a master's degree from any accredited professional educator preparation program;
- (b) eligibility for a class 1, 2, or 5 teaching license at the secondary level; and
- (c) verification of three years of successful teaching experience as an appropriately licensed and assigned teacher at the secondary level.

AUTH: Sec. 20-4-102, MCA
IMP: Sec. 20-4-106, 20-4-108, MCA

NEW RULE XXIII CLASS 5 PROVISIONAL LICENSE - K-12 PRINCIPAL ENDORSEMENT (1) To obtain a class 5 provisional license with a secondary principal endorsement, an applicant must provide verification of:

- (a) a master's degree from any accredited professional educator preparation program;
- (b) eligibility for a class 1, 2, or 5 teaching license at any level within K-12; and
- (c) verification of three years of successful teaching experience as an appropriately licensed and assigned teacher at any level within K-12.

AUTH: Sec. 20-4-102, MCA
IMP: Sec. 20-4-106, 20-4-108, MCA

NEW RULE XXIV CLASS 5 PROVISIONAL LICENSE - SUPERVISOR ENDORSEMENT (1) To obtain a class 5 provisional license with a supervisor endorsement an applicant must provide verification of:

- (a) a master's degree from an accredited university in the area requested for supervisory endorsement; and
- (b) verification of three years of appropriately licensed experience as a teacher in the area requested for supervisory endorsement.

AUTH: Sec. 20-4-102, MCA
IMP: Sec. 20-4-106, 20-4-108, MCA

NEW RULE XXV CLASS 5 PROVISIONAL LICENSE - SPECIALIST ENDORSEMENT (1) To obtain a class 5 provisional license with a specialist endorsement in school psychology an applicant must provide verification of:

- (a) a master's degree;
- (b) completion of at least 12 of the following 16 requirements:
 - (i) undergraduate or graduate general education/

psychology course work/content to include:

- (A) careers;
- (B) human growth and development;
- (C) general psychology;
- (D) abnormal psychology; and
- (E) learning theory;

(ii) undergraduate or graduate general education course work/content to include:

(A) exceptional children (must include special education);

- (B) curriculum development;
- (C) diagnosis and remediation of reading; and
- (D) educational evaluation; and

(iii) graduate psychological methods and techniques course work/content to include:

- (A) individual intelligence testing;
- (B) child psychopathology and achievement testing;
- (C) personality assessment;
- (D) interviewing and counseling;
- (E) behavior interventions;
- (F) school psychology practicum/internship; and
- (G) administration, role and function of school psychology; and

(c) specific completion of the individual intelligence testing requirement.

(2) To obtain a class 5 provisional license with a specialist endorsement in school counseling an applicant must provide verification of:

- (a) a master's degree; and
- (b) institutional verification of being within four course deficiencies of completing full requirements as outlined in [NEW RULE XXVIII].

AUTH: Sec. 20-4-102, MCA

IMP: Sec. 20-4-106, 20-4-108, MCA

NEW RULE XXVI CLASS 6 SPECIALIST LICENSE (1) A class 6 specialist license is valid for a period of five years.

(2) Class 6 specialist licenses may be issued with the following endorsements:

- (a) school psychologist; or
- (b) school counselor.

(3) Class 6 specialist licenses may be renewed pursuant to the requirements of ARM 10.57.215.

(4) A lapsed class 6 specialist license may be reinstated by showing verification of:

(a) four graduate semester credits or equivalent renewal units earned during the five-year period preceding the validation date of the new license; or

(b) eight graduate semester credits or equivalent renewal units earned during the nine-year period preceding the validation date of the new license.

AUTH: Sec. 20-4-102, MCA

IMP: Sec. 20-4-106, 20-4-108, MCA

NEW RULE XXVII CLASS 6 SPECIALIST LICENSE - SCHOOL PSYCHOLOGIST (1) To obtain a class 6 specialist license with a school psychologist endorsement an applicant must provide verification of:

(a) current credentials as a nationally certified school psychologist (NCSP) from the national association of school psychologists (NASP); or

(b) a master's degree in school psychology or a master's degree which includes the following minimums:

(i) 10 semester credits in general education/psychology (graduate or undergraduate) training to include:

- (A) new careers or transitions;
- (B) human growth and development;
- (C) general psychology;
- (D) educational psychology; and
- (E) abnormal psychology;

(ii) completion of the following course work is required at either the undergraduate or graduate level, provided the applicant has a master's degree from an accredited program:

(A) exceptional children (must include special education);

- (B) curriculum development;
- (C) diagnosis and remediation of reading; and
- (D) educational evaluation; and

(iii) completion of the following specific course work in psychological methods and techniques is required at the graduate level:

- (A) individual intelligence testing;
- (B) child psychopathology;
- (C) personality assessment;
- (D) interviewing and counseling;
- (E) behavioral interventions;
- (F) school psychology practicum/internship (a minimum of four semester hours of graduate credit or appropriate waiver); and

(G) administration, role and function of school psychology.

AUTH: Sec. 20-4-102, MCA

IMP: Sec. 20-4-106, 20-4-108, MCA

NEW RULE XXVIII CLASS 6 SPECIALIST LICENSE - SCHOOL COUNSELOR (1) To obtain a class 6 specialist license with a school counselor endorsement an applicant must provide verification of:

(a) a master's degree in school counseling (K-12); or

(b) a master's degree with equivalent graduate level school counseling content; and

(c) a supervised internship of at least 600 hours in a school or school related setting.

AUTH: Sec. 20-4-102, MCA
IMP: Sec. 20-4-106, 20-4-108, MCA

NEW RULE XXIX DEFINITION OF "IMMORAL CONDUCT"

(1) "Immoral conduct" related to the teaching profession, under 20-4-110(1)(f), MCA, includes, but is not limited to:

(a) sexual contact, as defined in 45-2-101(66), MCA, or sexual intercourse as defined in 45-2-101(67), MCA, between a teacher, specialist or administrator and a person the teacher, specialist or administrator knows or reasonably should know is a student at a public or private elementary or secondary school;

(b) conduct, whether resulting in the filing of criminal charges or not, which would constitute an offense under any of the following statutes of this state;

(i) 45-5-502, MCA, (sexual assault);

(ii) 45-5-503, MCA, (sexual intercourse without consent);

(iii) 45-5-504, MCA, (indecent exposure);

(iv) 45-5-505, MCA, (deviate sexual conduct), if the conduct either was non-consensual or involved a person the teacher, specialist or administrator knows or reasonably should know is a student at a public or private elementary or secondary school;

(v) 45-5-507, MCA, (incest);

(vi) 45-5-601, 45-5-602, or 45-5-603, MCA, (offenses involving prostitution);

(vii) 45-5-622(2), MCA, (endangering the welfare of children);

(viii) 45-5-623, MCA, (unlawful transactions with children);

(ix) 45-5-625, MCA, (sexual abuse of children);

(x) 45-8-201, MCA, (obscenity);

(xi) 45-5-627, MCA, (ritual abuse of minor);

(xii) any statute in Title 45, chapter 9, part 1, MCA, (dangerous drugs), provided that a first offense under 45-9-102(2), MCA, shall not fall within this definition;

(xiii) 45-5-220, MCA, (stalking);

(xiv) 45-5-223, MCA, (surreptitious visual observation or recordation);

(xv) 45-10-103, MCA, (criminal possession of drug paraphernalia);

(xvi) 45-10-105, MCA, (delivery of drug paraphernalia to a minor);

(xvii) 45-8-334, MCA, (possession of a destructive device);

(xviii) 45-8-361, MCA, (possession or allowing possession of weapon in school building);

(xix) 45-8-403, MCA, (use of threat to coerce gang membership);

(xx) 45-8-406, MCA, (supplying of firearms to criminal street gang);

(c) repeated convictions for violations of any one or

more of the criminal laws of this state, which violations are not otherwise grounds for suspension or revocation, if the repeated convictions, taken together, demonstrate that the teacher, specialist or administrator is unwilling to conform their conduct to the requirements of law;

(d) occurrences related to ARM 24.9.1003(3), (sexual harassment), defined as "unwelcome sexual advances, requests for sexual favors, and other verbal and physical conduct of a sexual nature" when:

(i) submission to the conduct is explicitly or implicitly made a term or condition of education;

(ii) submission to or rejection of the conduct is used as the basis for an educational decision affecting the individual; and/or

(iii) the conduct has the purpose or effect of unreasonably interfering with school performance or creating an intimidating, hostile or offensive learning environment.

AUTH: Sec. 20-4-102, MCA

IMP: Sec. 20-4-110, MCA

NEW RULE XXX INVESTIGATION (1) Upon receipt of a request made pursuant to 20-4-110(2), MCA and ARM 10.57.601, the board of public education shall implement an investigation to determine whether or not a substantial reason exists to hold a hearing for the issuance of a letter of reprimand or the suspension or revocation of the teacher, specialist or administrator license. This investigation shall include notifying the affected teacher, specialist or administrator of the charges against him/her by certified mail and allowing him/her 10 days to respond to those charges. After receiving a response, the board may request further information to ensure the preliminary investigation properly reflects the facts and position of each party.

AUTH: Sec. 20-4-102, MCA

IMP: Sec. 20-4-110, MCA

NEW RULE XXXI REPORTING OF THE SURRENDER, DENIAL, REVOCATION OR SUSPENSION OF A LICENSE (1) The superintendent of public instruction shall maintain membership in the national association of state directors of teacher education and certification (NASDTEC) and shall report information to the NASDTEC clearinghouse concerning licensure as provided herein and as required by NASDTEC membership.

(2) Upon receipt of a license surrendered pursuant to ARM 10.65.605, the superintendent of public instruction shall report to the NASDTEC clearinghouse that the superintendent accepted the surrender of a license held by the teacher, specialist or administrator.

(3) As provided herein, the superintendent of public instruction shall report to the NASDTEC clearinghouse the denial of licensure for cause. A denial "for cause" is defined as circumstances which:

(a) resulted in a determination by the superintendent that the applicant lacked the requisite moral and professional character; or

(b) would, in the case of a licensed Montana educator, be grounds for suspension or revocation.

(4) The superintendent shall not report to NASDTEC under (3) until either:

(a) the period for appeal of denial as provided in ARM 10.57.701 has expired; or

(b) the board of public education affirms the denial.

(5) The superintendent of public instruction shall report to the NASDTEC clearinghouse the suspension or revocation of a license held by a teacher, specialist or administrator.

(6) The superintendent of public instruction shall maintain, pursuant to the superintendent's record retention policies, a record of the circumstances surrounding the surrender, denial, revocation, suspension, or reprimand involving a teacher, specialist or administrator's license. The contents of that record shall be available for review by the certifying authority from any other jurisdiction in which the teacher, specialist or administrator seeks licensure.

AUTH: Sec. 20-4-102, MCA

IMP: Sec. 20-4-110, MCA

5. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

10.55.602 DEFINITIONS For the purpose of this chapter, the following terms apply:

(1) and (2) remain the same.

(3) "Certification" means licensure of an educator/specialist, as issued by the state of Montana, based on completion of an approved teacher, administrator or specialist program of an accredited college/university. Certification includes grade level(s), endorsement(s) and classification.

~~(3)~~ (13) "School administrator" means a person who is a part of the school's administrative or supervisory staff and who holds a class 3 certificate license and is appropriately endorsed, or who is enrolled in a board of public education approved administrator internship program under ARM 10.55.702 through 10.55.705.

(4) through (6) remain the same.

(7) "Endorsement" means an official indication on a license of the subject area(s) and/or specialized program area(s) for which the holder of the license is authorized to practice in Montana accredited schools.

(7) remains the same but is renumbered (8).

(9) "Part-time" means not less than six hours in a school week.

(8) through (10) remain the same but are renumbered (10) through (12).

AUTH: Sec. 20-2-114, MCA

IMP: Sec. 20-2-121, 20-3-106, 20-7-101, MCA

10.55.604 VARIANCES TO STANDARDS (1) A school district may apply to the board of public education through the ~~office~~ superintendent of public instruction to implement an alternative to a standard or a section of standards, excluding standards stating a statutory criteria, standards pertaining to teacher ~~certification~~ licensure or endorsement, and content and performance standards as defined by the board of public education and provided in guidance from the ~~office~~ superintendent of public instruction.

(a) through (i) remain the same.

(2) A school district may apply to the board of public education through the ~~office~~ superintendent of public instruction to create a charter school.

(a) through (d)(iii) remain the same.

(iv) ~~teacher certification~~ licensure and endorsement to the same extent as required or provided by state law or accreditation standards;

(v) through (e) remain the same.

AUTH: Sec. 20-2-114, MCA

IMP: Sec. 20-2-121, 20-3-106, 20-7-101, MCA

10.55.702 CERTIFICATION LICENSURE AND DUTIES OF DISTRICT ADMINISTRATOR - DISTRICT SUPERINTENDENT (1) The district superintendent shall ~~be:~~

(a) ~~be certified~~ licensed in accordance with state statutes and board of public education rules-;

(b) considered appropriately assigned if the superintendent is enrolled in a board of public education approved administrator/district superintendent internship program as defined below:

(i) the intern must be enrolled in an approved administrator/district superintendent training program with the state of Montana;

(ii) the intern must have completed the principal endorsement requirements or be simultaneously enrolled in an administrator/principal internship program;

(iii) the intern must file an application with the board of public education prior to placement within the local school districts in the state of Montana; and

(iv) at each assigned school district, the intern must annually receive an on-site visit by an appointed faculty member of the approved internship program.

(2) In cases where the intern is the only administrator hired by the district, the district shall contract with a properly licensed and endorsed administrator for annual and periodic supervision of the practice of the intern throughout the school year. Such supervision shall include participation in, review of, and written concurrence in all performance evaluations of licensed staff completed by the intern.

(3) The district superintendent shall perform

administrative duties in accordance with 20-4-402, MCA.

AUTH: Sec. 20-2-114, MCA

IMP: Sec. 20-2-121, MCA

10.55.703 CERTIFICATION LICENSURE AND DUTIES OF SCHOOL ADMINISTRATOR: PRINCIPAL (1) The school administrator principal shall:

(a) be certified licensed in accordance with state statutes and board of public education rules;

(b) be considered appropriately assigned if ~~he/she~~ the principal is enrolled in a board of public education approved administrator/principal internship program as defined below:

(i) the intern must be enrolled in an approved administrator/principal training program within the state of Montana;

(ii) the intern must file an application with the board of public education prior to placement within a school district in the state of Montana;

(iii) at each assigned school, the intern must annually receive an on-site visit by an appointed faculty member of the approved internship program;

(iv) at each assigned school, the intern shall receive an appropriate level of supervision by a properly licensed and endorsed administrator hired by the district. Such supervision shall include participation in, review of, and written concurrence in all performance evaluations of licensed staff completed by the intern. In cases where the intern is the only administrator hired by the district, the district shall contract with a properly licensed and endorsed administrator for annual and periodic supervision of the practice of the intern throughout the school year.

(c) have a certificate license endorsed at the level assigned as ~~an administrator~~ a principal, except where one individual serves as the single administrator for the entire district under ARM 10.55.705(1)(a) or (b), where the superintendent may hold either a high school or elementary administrative principal endorsement. No individual may be assigned a total of more than 100 percent full-time equivalent (FTE);

(d) through (g) remain the same.

AUTH: Sec. 20-2-114, MCA

IMP: Sec. 20-2-121, MCA

10.55.704 ADMINISTRATIVE PERSONNEL: ASSIGNMENT OF DISTRICT SUPERINTENDENTS (1) remains the same.

(a) A full or part-time district superintendent and a ~~full or~~ at least a half-time school administrator/principal as defined in ARM 10.55.705(1)(a) or (b) shall be employed for an independent elementary district with fewer than 18 full-time equivalent (FTE) certified licensed staff, or the district shall utilize the services of the county superintendent to fulfill the duties of the district superintendent. One

administrator individual may serve as both district superintendent and part-time school administrator/principal as defined in ARM 10.55.705(1)(a) or (b). A superintendent serving under this subsection shall devote full time to administration and supervision not to exceed a total assignment of 100 percent FTE.

(b) A full or part-time district superintendent and a ~~full or at least a~~ half-time school administrator/principal shall be employed for a combined elementary-high school district or a county high school district with fewer than 30 FTE ~~certified~~ licensed staff. A full or part-time district superintendent and a ~~full or at least a~~ half-time school administrator/principal shall be employed for an independent elementary district with more than 18 but fewer than 30 FTE ~~certified~~ licensed staff. One administrator may serve as both superintendent and part-time school administrator/principal as defined in ARM 10.55.705(1)(a) or (b). A superintendent serving under this subsection shall devote full time to administration and supervision not to exceed a total assignment of 100 percent FTE.

(c) A full-time (one FTE) district superintendent shall be employed for any district with 30 or more FTE ~~certified~~ licensed staff or 551 or more students.

(2) A combined elementary-high school district, or a county high school district, or an independent elementary school district with 100 or more FTE ~~certified~~ licensed staff shall employ a full-time curriculum coordinator to supervise the educational program and alignment of standards, assessment, curriculum, instruction, and instructional materials. The curriculum coordinator shall hold a class 3 administrative ~~certificate~~ license. Those districts with less than 100 FTE ~~certified~~ licensed staff and no full-time curriculum coordinator shall employ the services of a regional curriculum consortium or a part-time, designated curriculum coordinator.

AUTH: Sec. 20-2-114, MCA

IMP: Sec. 20-2-121, MCA

10.55.705 ADMINISTRATIVE PERSONNEL: ASSIGNMENT OF SCHOOL ADMINISTRATORS/PRINCIPALS (1) School districts shall employ appropriately endorsed school administrators/principals as follows:

(a) ~~A~~ a part-time district superintendent or supervising teacher and county superintendent for schools with fewer than 9 nine full-time equivalent (FTE) ~~certified~~ licensed staff;

(b) .5 FTE principal for schools with 9-17 FTE ~~certified~~ licensed staff;

(c) ~~1~~ one FTE principal for schools with 18-29 FTE ~~certified~~ licensed staff or 250-550 students;

(d) ~~2~~ two FTE administrators/principals for schools with 551-1050 students;

(e) ~~3~~ three FTE administrators/principals for schools with 1051-1550 students;

(f) 4 four FTE administrators/principals for schools with 1551-2050 students; and

(g) 5 five FTE administrators/principals for schools with 2051 or more students.

(2) In schools that require two or more FTE administrators/principals, at least one individual with more than one school administrator, the first administrator shall be appropriately endorsed as principal. The additional administrators At least a second administrator shall have administrative endorsement(s) at the appropriate level(s) and in the area(s) that accurately reflects their the administrator's supervisory responsibilities. For example, a school may assign properly certified licensed and endorsed curriculum coordinators to supervise the appropriate instructional programs.

(3) remains the same.

AUTH: Sec. 20-2-114, MCA

IMP: Sec. 20-2-121, MCA

10.55.707 TEACHER AND SPECIALIST CERTIFICATION LICENSURE

(1) Teachers shall hold Montana teaching certificates licenses.

(2) An emergency authorization of employment is not a valid certificate license; it is granted to a district which, under emergency conditions, cannot secure the services of a certified licensed teacher.

(3) All school psychologists must be certified licensed with a class 6 specialist certificate license.

(4) Certified Licensed teachers and guidance school counselors who are enrolled in board of public education approved internship programs according to the following provisions shall be considered appropriately assigned when teaching or serving as a guidance counselor in the internship area.

(a) Only an accredited educator preparation institution located within the boundaries of the state of Montana shall be eligible to operate an approved endorsement area internship program.

(b) Only a currently licensed Montana teacher enrolled in an approved endorsement area internship program shall be considered appropriately assigned when teaching or serving in the endorsement area within three years following the date of initial enrollment.

(c) An educator preparation program shall obtain approval of the board of public education prior to placing interns in positions in local school districts in the state of Montana. In order to gain approval, the program must:

(i) file an application with the board of public education;

(ii) include a model plan for preparation of interns prior to placement that shall include, at a minimum, completion of or enrollment in six semester credits of study in the endorsement field the teacher is pursuing;

(iii) appoint a faculty member responsible for ensuring compliance with all program requirements by interns enrolled in the program, which shall include, as a minimum, an on-site visit to each school district in which an intern is placed at least once during the term of the internship.

(d) All interns placed in a school district shall receive an appropriate level of periodic supervision and training by a licensed teacher who is currently endorsed in the intern's prospective endorsement area.

(5) remains the same.

AUTH: Sec. 20-2-114, MCA

IMP: Sec. 20-2-121, MCA

10.55.710 ASSIGNMENT OF GUIDANCE SCHOOL COUNSELING STAFF

(1) and (2) remain the same.

(3) Schools and/or districts with fewer than 125 students shall:

(a) employ or contract with a certified licensed, endorsed school guidance counselor or class 6 specialist, or they shall

(b) seek alternative ways to provide guidance counseling services and meet the required guidance school counseling program goals, using certified licensed personnel. For example, they may contract for services or receive services from a regional, certified guidance licensed school counselor or class 6 specialist provided through joint efforts of adjacent districts and/or counties.

(a) (i) When a school district uses alternatives to meet this standard, it shall submit a description of the alternatives to the office superintendent of public instruction and seek approval from the board of public education.

AUTH: Sec. 20-2-114, MCA

IMP: Sec. 20-2-121, MCA

10.57.101 REVIEW OF POLICY (1) By authority of 20-4-102, MCA, Article X of the Montana Constitution the board of public education exercises general supervision over the public school system and such other public educational institutions as may be assigned by law. By authority of 20-4-102, MCA the board of public education adopts policies for the issuance of teacher certificates licenses on the recommendations of the superintendent of public instruction.

(2) Recognizing that the periodic review of the certification policies is vital, the The board regularly will shall consider recommendations for revision of the policies at any time it deems necessary. Notwithstanding any changes made in any five year period, every five years the board shall have made a comprehensive review of certification policies to insure that such policies are meeting the needs of the state.

AUTH: Sec. 20-4-102 MCA

IMP: Sec. 20-4-102 MCA

10.57.102 DEFINITIONS The following definitions apply to this chapter.

(1) "Acceptable evidence" means current official and ~~up-to-date~~ transcripts, portfolio ~~written statements~~ of ~~appropriate officials~~ and such other data as may be deemed necessary by the board of public education and/or the superintendent of public instruction.

(2) "Accredited" refers to approval (accreditation) by a ~~regional accreditation association~~ the national council for the accreditation of teacher education (NCATE) and/or approval by a state board of education. ~~that is acceptable to the board of public education.~~ ~~Regional accreditation serves as a base for national accreditation and/or state certification.~~ ~~The six regional accrediting associations are: New England association of schools and colleges, Middle States association of colleges and schools, North Central association of colleges and schools, Northwest association of schools and colleges, Southern association of colleges and schools and Western association of schools and colleges.~~ ~~State approval of programs leading to certification may also be required.~~

(3) ~~"Approved colleges" are those regionally accredited colleges listed in a recognized directory of accredited higher education institutions.~~

(4) (5) "Appropriate area(s) endorsements" are those subject field(s) — such as English, mathematics, science, social studies, etc. — identified by the board of public education.

(5) (6) "Appropriate grade level(s)" means elementary, secondary or other levels as defined by the board of public education.

(6) remains the same but is renumbered (7).

(7) (3) ~~"Approved teacher education~~ "Accredited professional educator preparation program" means a program for teacher preparation accredited by ~~national or regional accrediting association~~ NCATE and/or a state board of education and/or recognized by the board of public education.

(8) "Certification" means licensure of an educator/specialist, as issued by the state of Montana, based on completion of a teacher, administrator or specialist program of an accredited college/university. Certification includes grade level(s), endorsement(s) and classification.

(8) (9) "College credit" means credit received for completion of a course from an accredited college. ~~For the purpose of certificate renewal, e~~ College credits are counted as in the following manner: 1 one quarter credit is being equal to 10 clock hours, or 1 one semester credit is being equal to 15 clock hours. One semester credit is equivalent to one and one-half quarter credits and one quarter credit is equivalent to two-thirds semester credit.

(9) ~~"Endorsement" means official indication of the level and/or the appropriate area in which the certificate holder is authorized to teach.~~

(10) ~~"Elementary endorsement" of class 1, class 2 and class 5 certificate~~ means the holder is authorized to teach in grades kindergarten through eight.

(11) "Endorsement" means an official indication on a license of the subject area(s) and/or specialized program area(s) for which the holder of the license is authorized to practice in Montana accredited schools.

(13) "License" or "licensure" means a certificate issued or applied for under 20-4-101, et seq., MCA.

~~(11) "Secondary level endorsement" of the class 2 certificate requires a teaching major of at least 30 semester (45 quarter) credits and a teaching minor of at least 20 semester (30 quarter) credits; or at least 40 semester (60 quarter) credits in a single field of specialization, provided these fields are subjects commonly offered for credit in the high school curriculum and provided that the pattern of preparation constitutes the approved secondary teacher education program of an accredited college or university. At least 16 semester (24 quarter) credits of professional preparation for teaching, to include student teaching, are also required. Within the total preparation, emphasis must be placed on student growth and development, behavior, reading and writing skills. The student teaching experience, if taken at grades levels 7-12, must also have an observation period at grade 5 or 6. If the student teaching experience is at grade 5 or 6, an observation period must be taken at grades 7-12.~~

~~(a) (14) "Secondary level endorsement" of the class 1, 2, or 5 certificate means the holder is authorized to teach in grades 5-12 or 7-12, depending upon teacher preparation. Secondary level endorsement is accompanied by endorsement as to the appropriate area(s) in which the holder is authorized to teach. Specifically in the subject field endorsement. Those applicants who have completed a secondary level teacher preparation program shall be granted a 5-12 level license.~~

~~(b) An applicant seeking an initial administrative endorsement for the secondary grades who has teacher training at the 7-12 level will be given an option of receiving a class 3 certificate allowing practice at only the 7-12 level or a provisional class 5 certificate to complete the 5-12 deficiencies in his teaching program while serving in a 5-12 setting.~~

~~(12) "Renewal unit" means a quantitative recognition of a certificate holder's participation in activities designed to supplement, enhance, and/or upgrade their professional skills or knowledge base (see ARM 10.57.215). The activity must be:~~

- ~~(a) a planned and structured experience,~~
- ~~(b) of benefit to the certificate holder's professional development, and~~
- ~~(c) an exposure to a new idea or skill or an extension of an existing idea or skill.~~

~~(13) "Teacher education" means a curriculum recognizing a desirable proportion of academic and professional courses and should not be construed only as a degree in education.~~

~~(14) "Year of study" means an academic year, or the equivalent, comparable to at least 30 semester (45 quarter) hours of graduate or undergraduate credit.~~

~~(16) (17) "Year of validity" means the full year of a teaching certificate license. All certificates licenses are validated July 1 through June 30.~~

~~(16) One semester credit is equivalent to one and one-half quarter credits; one quarter credit is equivalent to two-thirds semester credit.~~

~~(17) "Teacher" means any person, except a district superintendent, who holds a valid Montana teacher certificate that has been issued by the superintendent of public instruction under the provisions of 20-1-101, MCA, and the policies of the board of public education, and who is employable by a district as a member of its instructional, supervisory or administrative staff.~~

~~(18) (16) "Year of teaching experience" means employment during a school fiscal year as a licensed member of an instructional staff. Experience will be considered on an individual basis by the appropriate official.~~

~~(19) (15) "Year of administrative experience" means employment during a school fiscal year as a licensed member of a supervisory or administrative staff.~~

~~(20) (12) A "Lapsed license" means that a certificate license is considered lapsed if:~~

~~(a) The holder has not earned the required number of renewal units during the term of the certificate license (units earned through August 31 immediately following the expiration date of a certificate license also will shall be considered for renewal); or~~

~~(b) The experience requirement has not been met; or~~

~~(c) Having completed (a) and (b), the holder has not earned the required number of renewal units during the term of the license but has not renewed the certificate license by June 30 following the year of expiration.~~

~~(21) (4) "Approved Accredited specialist program" means a program for the preparation of specialists accredited by a national or regional accrediting association or recognized by the board of public education professional accrediting body and/or approval by a state board of education or an equivalent. State approval of programs leading to this certificate may also be required. (Persons authorized to apply for the specialist certificate: school psychologists and school counselors.)~~

~~(22) "Workshop" means a concentrated presentation of a single topic for not less than 1 hour.~~

AUTH: Sec. 20-4-102 MCA

IMP: Sec. 20-4-106 MCA

10.57.104 WAIVER OF STUDENT TEACHING/SUPERVISED PRACTICE

~~(1) The requirement for student teaching may be waived only by an appropriate official. Persons seeking initial licensure must successfully complete a supervised teaching~~

experience in an accredited school. Supervised teaching is student teaching under an appropriate student teaching program and/or supervised practice as a class 5 provisional license holder. The superintendent of public instruction may not waive this requirement.

AUTH: Sec. 20-4-102 MCA

IMP: Sec. 20-4-102 MCA

10.57.107 EMERGENCY AUTHORIZATION OF EMPLOYMENT

~~(1) Montana law (20-4-111, MCA) establishes that an emergency authorization of employment may be granted to a school district for an individual who does not hold a valid teacher certificate when such district cannot obtain the services of a certified teacher. The person for whom such an emergency authorization is sought either shall have held previously a valid teacher certificate or shall have met standards prescribed by the board of public education.~~

~~(2) In accordance with 20-4-111, MCA, school administrators who have exhausted all possibilities for obtaining a regularly certified licensed teacher may request that the superintendent of public instruction issue an emergency authorization of employment to the district to employ a person to teach in the emergency situation. The requirements and standards set forth below must be met to assure consideration of a request for an emergency authorization of employment:~~

~~(a) remains the same.~~

~~(b) The position must have been advertised through the teacher placement offices of the Montana job service and the Montana university system or its equivalent far enough in advance to reasonably enable qualified applicants to submit applications and credentials and to be interviewed.~~

~~(c) remains the same.~~

~~(i) shall have previously held a valid teacher or specialist certificate license; or~~

~~(ii) shall hold a bachelor's degree related to the area for which the emergency authorization of employment is being sought; or.~~

~~(iii) shall provide acceptable evidence of American Indian cultural expertise related to the area for which the emergency authorization of employment is being sought.~~

~~(d) The individual for whom the emergency authorization is being sought shall not have held a valid class 5 certificate license within the year preceding the year for which emergency authorization of employment is being sought.~~

~~(3) remains the same but is renumbered (2).~~

~~(a) Under section (2)(c)(iii) a district administrator may apply for the renewal of an approved emergency authorization on a continuing basis by annually requesting renewal by letter to the superintendent of the office of public instruction. The copy of that request must be submitted to the appropriate county superintendent of schools.~~

AUTH: Sec. 20-4-102, MCA
IMP: Sec. 20-4-111, MCA

10.57.110 AREA OF PERMISSIVE SPECIALIZED COMPETENCY

(1) A holder of a Montana teaching certificate license may apply for a statement of specialized competency to appear on the certificate license. A certificate license holder may qualify for a statement of specialized competency by the completion of a minimum of 20 semester college credit hours or equivalency in a specific academic area as approved by the board of public education. Accredited areas of permissive special competency are early childhood education and gifted and talented education.

AUTH: Sec. 20-4-102, MCA
IMP: Sec. 20-4-103, MCA

10.57.112 CERTIFICATE LICENSE OF EXCHANGE TEACHERS

(1) A class 5 certificate license may be issued for one year to a teacher, administrator or specialist who is on an exchange program with a school district.

AUTH: Sec. 20-4-102, MCA
IMP: Sec. 20-4-103, MCA

10.57.201 GENERAL PROVISIONS TO ISSUE CERTIFICATE LICENSES (1) Teaching certificates Teacher, specialist, or administrator licenses are issued by the superintendent of public instruction to applicants who submit acceptable evidence of successful completion of the appropriate approved teacher education program of an accredited college or university. a professional educator preparation program accredited by NCATE and/or a state board of education.

(2) Applicants for initial licensure who meet the following qualifications to practice shall be licensed class 1, 2, 3, or 6 as appropriate:

(a) individuals who have held, within the last five years, a professional - not provisional or alternative - teacher, specialist, or administrator license from another state in an area that can be licensed in Montana. This section applies only to individuals who have completed an applicable accredited professional educator preparation program in an area that can be licensed in Montana; or

(b) individuals who have graduated within the last five years from a teacher, specialist, or administrator professional educator preparation program in an area that can be licensed in Montana that is either accredited by NCATE or a state board of public education; or

(c) individuals who hold a current license from the national board for professional teaching standards in an area that can be licensed in Montana; or

(d) individuals who currently hold a provisional class 5 license who meet one or more of the above three qualifications.

(3) Applicants must meet all other nonacademic requirements for licensure in Montana.

AUTH: Sec. 20-4-102, MCA
IMP: Sec. 20-4-103, MCA

10.57.204 EXPERIENCE VERIFICATION (1) The determination of appropriate educational experience ~~appropriate to renew any certificates will shall~~ be made by the superintendent of public instruction.

~~(a) At least 100 days of substitute teaching or other instructional experience is required to constitute the equivalent of successful teaching experience in the five-year period preceding the expiration of a current Montana certificate.~~

~~(2) Persons employed in educational positions involved in instruction with agencies under the jurisdiction of the state or those who have served full-time in professional education associations may submit the experience gained in the positions to meet the verification of experience requirement for renewal of teaching or administrative certificates. Other stipulated requirements must be met.~~

~~(3) Incumbency in the office of county superintendent will be sufficient to serve as the required verification of experience for renewal of teaching or administrative certificates held by the county superintendent. Other stipulated requirements must be met.~~

~~(4) (2) When teaching experience is required for a new certificate license or endorsement, the majority of the experience required must be obtained in a school organization consistent with Montana's K-12 pattern.~~

~~(5) (3) When experience is required for a new certificate license or endorsement, experience gained prior to basic eligibility for initial certification licensure is not considered.~~

~~(6) Experience gained as a certified specialist may be considered for renewal of a teaching or administrative certificate. Experience gained as a certified teacher or administrator may not be considered for renewal of a specialist certificate.~~

~~(7) Instructional assistant experience may be considered for renewal if the following conditions are met:~~

~~(a) The individual must hold a valid Montana teaching certificate when the experience is acquired.~~

~~(b) The experience must be within the K-12 structure.~~

~~(c) It must be verified by the appropriate administrative supervisor as an instructional experience. Instructional assistant experience is defined as experience utilizing the course of instruction prescribed by the trustees or administrative board under an employment agreement for a period of no less than 100 days during the 5-year period of a current Montana certificate.~~

~~(d) This experience will apply toward renewal only. It cannot be used for initial certification or another class or~~

~~endorsement for which teaching experience is required.~~

~~(e) Non-instructional aide experience will not apply toward renewal.~~

AUTH: Sec. 20-4-102, MCA

IMP: Sec. 20-4-103, MCA

10.57.209 EXTENSION OF CERTIFICATES LICENSES FOR MILITARY SERVICE (1) The unexpired term of a valid teaching certificate license held by a person engaged in teaching at the time that person is called into active military service will shall be extended in proportion to the length of active military service. Official notification of the beginning and termination dates of active military service must be submitted on release from active duty to the superintendent of public instruction to secure such extension of certification licensure.

(2) The unexpired term of a valid teaching certificate license will shall be extended one year for each year of active military service not to exceed five years. In calculating the unexpired term of a certificate license for military extension purposes, an expired certificate license year will shall be any year in which a teacher has taught more than one-half of the school year.

(3) The extension period of the unexpired term of any certificate license becomes automatically effective on the previous July 1 of the year of termination of active military service. On expiration of this extension period, renewal requirements must be met for further certification licensure.

AUTH: Sec. 20-4-102, MCA

IMP: Sec. 20-4-102, MCA

10.57.215 RENEWAL REQUIREMENTS (1) Sixty units of renewal activities are required for renewal of class 2 1, 3, and 4B and for class 1 and 4A effective with those expiring in 1995. Beginning with those class 2 and 4B certificates expiring in 1997, at least 40 renewal units (3 semester or 4 quarter credits) must be obtained through college credits and 7 licenses. Sixty units of renewal activities are also required for renewal of class 2 licenses, 40 of which must be earned through college credit.

(2) Renewal activities used to renew all certificates licenses must be:

(a) a planned and structured experience_{7i};

(b) of benefit to the certificate license holder's professional development_{7i}; and

(c) an exposure to a new idea or skill or an extension of an existing idea or skill_{7i}; or

(d) the instruction of a relevant higher education course(s), based upon the academic credit of the course(s), by a Montana certificate license holder who has achieved a graduate degree in an endorsed field of specialization_{7i}; or

(e) the completion of the assessment process for

national board certification licensure, or renewal of national board certification licensure, through the standards of the national board for professional teaching standards. Verification of completion of the national board assessment ~~will earn~~ shall result in 60 renewal units. Renewal units earned may apply to renewal of an expiring license, ~~with excess carried over to the next validation period.~~ Class 2 certificate license holders may use national board renewal units in lieu of college course credits as required in ARM 10.57.215(1). This process may also be used in lieu of any credits required to reinstate a lapsed license.

(3) through (3)(c) remain the same.

~~(4) The following restrictions and conditions on renewal unit activities apply:~~

~~(a) Renewal units will be available only in whole units and in amounts of 5 units or more per approved activity.~~

~~(b) The certificate license holder will shall be solely responsible for retaining the renewal unit verification to be used in the application for certificate license renewal.~~

(5) State validated professional development activities other than college/university credit earned by appropriately licensed educators from states other than Montana may be accepted for the renewal of Montana certification licenses when the intent and structure of the process assures the meeting or exceeding of Montana renewal unit requirements for certificate licensure.

(6) Renewal requirements for class 4 licenses are set forth in [NEW RULE XIV, NEW RULE XV and NEW RULE XVI].

AUTH: Sec. 20-2-121(1), 20-4-102, MCA

IMP: Sec. 20-4-102(1), 20-4-108, MCA

10.57.216 APPROVED RENEWAL ACTIVITY (1) Providers of professional development activities which verify acceptable renewal unit activities for certificate license renewal are:

(a) accredited college and university academic credit programs, for which no application or prior approval is required, ~~and~~

~~(b) the following entities:~~

~~(i) state accredited school systems districts, upon submission and approval of an application for status as a provider of professional development renewal unit credit, ~~and~~~~

~~(ii) (c) professional education organizations, ~~to include the Montana school boards association, and government agencies (federal, state, tribal, county, city), upon submission and approval of an application for status as a provider of professional development renewal unit credit, ~~and~~~~~~

~~(iii) government agencies (federal, state, tribal, county, city), upon submission of an application for status as a provider of professional development renewal unit credit, ~~and~~~~

~~(c) (d) an individual certificate license holder not currently under contract or any organization not approved as a provider in Montana may request participation with an approved provider, or apply directly to the certification division,~~

office superintendent of public instruction, in advance of the beginning of a program.

(2) Those school ~~systems~~ districts approved as providers of professional development may identify programs at locations other than their site of operation for renewal unit verification to be awarded by them. This may include out-of-state programs and conferences ~~which are appropriate for a client's professional development.~~

(3) Those entities approved by the office superintendent of public instruction as providers of professional development programs are those applicants who agree to maintain a process in compliance with the definition of renewal unit activities found in ARM 10.57.102 and further clarified in ARM 10.57.215 and 10.57.216.

(a) Approved providers must agree to report the activities undertaken as professional development for renewal unit awards annually to the office superintendent of public instruction.

(b) Approved providers must agree to submit to an audit of records ~~to verify compliance with the terms of the provider agreement. This audit, conducted by the office superintendent of public instruction, may be the result of a routine random review or in response to an inquiry. The results of all audits will be reported to the board of public education by the office of public instruction at least on an annual basis.~~ Records which must be maintained by the provider include:

(i) through (iii) remain the same.

(c) For all programs designated as professional development for the purpose of issuing renewal units to certificate license holders, the provider will shall prepare and issue completed renewal unit registration forms to eligible participants. This form will shall be provided by the office superintendent of public instruction and this form, or an approved facsimile, must be utilized for all renewal unit awards.

(4) Upon the receipt of a complete and accurate annual report of professional development activities ~~for issuing of renewal units, by the superintendent of public instruction on or before the deadline for submission, the provider status will shall be continued on a listing of providers.~~

~~(a) (5) This listing will be duplicated for distribution to the board of public education annually and will be available for public distribution. The superintendent of public instruction shall annually provide a report to the board of public education, which shall include, at a minimum, a list of providers.~~

(b) remains the same but is renumbered (6).

~~(5) If, upon the reporting of the results of a program audit of any provider, the board of public education finds cause to remove an entity from the provider status, the designated official representing that entity will be notified of a time and date for an open hearing to determine whether continued provider status should be maintained.~~

AUTH: Sec. 20-4-102, MCA
IMP: Sec. 20-4-108, MCA

10.57.217 APPEAL PROCESS FOR RENEWAL ACTIVITY (1) ~~Any appeal to the content of a renewal activity or to the process or practices used by a renewal unit provider may be submitted to the superintendent of public instruction for review and determination.~~

(2) Decisions of the superintendent on matters of renewal unit activity or provider status may be appealed to the board of public education.

AUTH: Sec. 20-4-102, MCA
IMP: Sec. 20-4-108, MCA

10.57.218 RENEWAL UNIT VERIFICATION (1) Applications to the office superintendent of public instruction for certificate license renewal will shall be accompanied by verification of meeting the professional development requirements through:

(a) official documentation (transcripts or grade reports) from an accredited college or university, or verification of renewal units.

(b) ~~a summary document, provided by the office of public instruction, itemizing the required number of renewal units for which the applicant submits copies of completed renewal unit registration forms.~~

(2) ~~Certificate holders not currently under contract in Montana may use an approved provider of renewal unit activities or apply directly to the certification division, office of public instruction, for professional development content other than credit from an accredited college or university.~~

AUTH: Sec. 20-4-102, MCA
IMP: Sec. 20-4-108, MCA

10.57.220 RECENCY OF CREDIT (1) An applicant for initial class 1, 2, 3 or 6 licensure certification who holds current out-of-state certification and has a minimum of only year (at least 9 consecutive months) of appropriately certified teaching, administrative, or specialist experience during the 5-year period immediately preceding the validation date of the new certificate, and who has documented evidence of meeting the equivalent of Montana's 60 renewal unit requirement for renewal (state, school or district verified inservice hours or academic credit) during the same time period, will have met the recency of credit requirement.

(2) ~~An applicant for initial certification whose degree is more than 5 five but less than 15 years old or an applicant whose period of lapse is 15 years or less, and who does not have current out-of-state licensure certification and recent appropriate experience as outlined in (1), must have the following credits earned eight semester credits within the 5~~

~~five-year period preceding the effective date of the certificate license:~~

- ~~(a) Class 1 professional certificate:
8 semester (12 quarter) credits;~~
- ~~(b) Class 2 standard certificate:
8 semester (12 quarter) credits;~~
- ~~(c) Class 3 administrative certificate:
8 semester (12 quarter) credits;~~
- ~~(d) Class 6 specialist certificate:
8 graduate semester (12 quarter) credits.~~

~~(3) An applicant for initial certification whose degree is over 15 years old or an applicant whose period of lapse is over 15 years, and who does not have current out-of-state certification and recent appropriate experience as outlined in (1), must obtain the credits listed in (2) and the following credits based on teaching or specialist experience:~~

- ~~(a) No teaching/specialist or equivalent experience since the original training: +4 additional sem (6 qtr) credits (graduate level for specialists)~~
- ~~(b) 1-4 years teaching/specialist or equivalent experience: +3 additional sem (4 qtr) credits (graduate level for specialists)~~
- ~~(c) 5-10 years teaching/specialist or equivalent experience: +2 additional sem (2 qtr) credits (graduate level for specialists)~~
- ~~(d) over 10 years teaching/specialist or equivalent experience: +0 additional sem (0 qtr) credits (graduate level for specialists)~~

~~(4) Applicants may utilize the provisional certificate to earn the recent credits if all other academic requirements are met.~~

~~(5) Credits for recency or reinstatement of any certificate must supplement, strengthen and/or update the basic preparation.~~

~~(6) Applicants with graduate degrees in an endorsable field of specialization may use experience instructing in relevant higher education courses for recency in applying for certification.~~

AUTH: Sec. 20-4-102, 20-4-103, MCA

IMP: Sec. 20-4-102, 20-4-103, 20-4-106, MCA

10.57.301 ENDORSEMENT INFORMATION (1) ~~Board of public education approval:~~ The only endorsements on Montana teaching, administrative or specialist certificates licenses are those approved by the board of public education. A major or a minor or the equivalent in the endorsement area is required.

(2) Certificates Licenses are endorsed by the superintendent of public instruction for the appropriate

level(s) and area(s) of preparation based on the college program completed.

(3) Appropriate teaching areas acceptable for certificate license endorsement include: agriculture, art K-12, biology, business education, career and vocational/technical education endorsements as determined by the superintendent of public instruction, chemistry, computer science K-12, drama, earth science, economics, elementary education, English, English as a second language K-12, family and consumer sciences, French K-12, geography, German K-12, guidance and school counseling K-12, health, history, history-political science, industrial arts, journalism, Latin K-12, library K-12, marketing, mathematics, music K-12, other language K-12, physical education and health K-12, physical science, physics, political science, psychology, reading K-12, Russian K-12, science (broadfield), social studies (broadfield), sociology, Spanish K-12, special education P-12, speech-communication, speech-drama, technology education, trade and industry, and traffic education K-12.

(4) Appropriate career and vocational/technical education areas acceptable for endorsement on the class 4 license include but are not limited to: auto body, auto mechanics, building trades/construction, drafting/CAD, electronics, graphic arts, machine shop, metal working, power mechanics, welding, computer network administration, and health occupations.

~~(4)~~ (5) Appropriate administrative areas acceptable for certificate license endorsement include: elementary principal, secondary principal, K-12 principal, K-12 superintendent and supervisor.

~~(5)~~ (6) Appropriate specialist areas acceptable for certificate license endorsement are school psychologist and school counselor.

~~(6)~~ (7) Both elementary and secondary ~~training to include preparation, including student teaching or appropriate waiver are~~ university supervised teaching experience are required for endorsement in any approved K-12 endorsement area. ~~Where a state approved program of at least a minor (minimum of 20 semester credits) at the elementary or secondary level is presented for endorsement in a K-12 endorsement area, an endorsement at the level of preparation may be issued which limits the appropriate assignment to the level of preparation. The K-12 endorsement areas outlined in (3) may also be endorsed at the elementary or secondary level depending on the verified level of preparation.~~

(a) A class 1 or 2 certificate license may be endorsed in special education P-12 with program preparation at the elementary or secondary levels, or a balanced K-12 program of comparable preparation.

(b) The balanced K-12 certificate license level option is available through Montana board of public education-approved special education programs for those individuals with:

(i) remains the same.

(ii) verified completion of an out-of-state state-approved special education program which includes student teaching or university supervised teaching experience.

(c) completion of an accredited professional educator preparation program in any disability area shall result in a special education endorsement.

~~(7) The guidance and counseling endorsement requires verification of 3 years of appropriately certified teaching or counseling experience in addition to completion of a college approved guidance K-12 major or minor.~~

(8) Applicants with graduate degrees in an endorsable field of specialization may use experience in instructing in relevant higher education courses as credit in that endorsement area for certification licensure.

~~(9) Broadfield endorsements identified in (3), above, must constitute programs of at least 40 semester (60 quarter) credits and have at least 3 teaching areas within that field which have at least 10 semester credits of preparation specific to that area.~~

~~(10) An endorsement may be dropped from a teaching certificate license at the end of the valid term of the certification license if minimum certification licensure requirements (major and minor or extended major) are met without that endorsement.~~

AUTH: Sec. 20-4-102, MCA

IMP: Sec. 20-4-103, 20-4-106, MCA

10.57.501 SOCIAL WORKERS, NURSES AND SPEECH AND HEARING THERAPISTS

(1) Professionals such as social workers, nurses and speech and hearing therapists who are teaching in a classroom must have a teaching certificate license appropriate for the level(s) and area(s) taught.

(2) Speech and hearing therapists engaged in school services in the public schools of Montana who issued grades or credits in the pupil's school program must be certified licensed under the regularly established teacher certification licensure requirements in speech and hearing association. For related school services which do not involve credits or promotion, the superintendent of public instruction ~~will~~ shall recognize speech and hearing therapists licensed by the American speech and hearing association on the basis ~~or~~ of professional association standards on file ~~in~~ with the ~~office~~ of the superintendent of public instruction.

AUTH: Sec. 20-4-102, MCA

IMP: Sec. 20-4-102, MCA

10.57.601 REQUEST TO SUSPEND OR REVOKE FOR DISCIPLINE AGAINST THE CERTIFICATE LICENSE OF A TEACHER, SPECIALIST, OR ADMINISTRATOR CERTIFICATE: PRELIMINARY ACTION

(1) Pursuant to 20-4-110(2), MCA, Requests to issue a letter of reprimand or to suspend or revoke a teacher, specialist or administrator certificate license shall be

brought before the board of public education by only:

(a) ~~A~~an official action of the board of trustees of a local district for any teacher, specialist or administrator currently employed by that district or under contract or otherwise employed by that district at any time during the twelve 12 months prior to the receipt ~~of~~ by the board of public education of the ~~suspension or revocation request to issue a letter of reprimand or to suspend or revoke;~~ or

(b) ~~T~~the superintendent of public instruction.

(2) Requests shall specify whether a letter of reprimand, revocation or suspension is sought and shall include:

(a) ~~T~~the specific charge(s) against the teacher, specialist or administrator~~;~~;

(b) ~~T~~the subsection of 20-4-110, MCA, under which the charge(s) are is brought~~;~~;

(c) ~~A~~an outline of the facts and evidence related to the charge(s)~~;~~; and

(d) A a copy of the minutes documenting the trustees' decision to request a letter of reprimand or revocation or suspension of a license, if the request is made by a board of trustees.

~~(3) Upon receipt of such request, the board of public education shall implement an investigation to determine whether or not a substantial reason exists to hold a hearing for suspension or revocation of the teacher, specialist or administrator certificate. This investigation shall include notifying the affected teacher, specialist or administrator of the charges against him/her by certified mail and allowing him/her ten days to respond to those charges. After receiving a response, the board may request further information from either party to ensure the preliminary investigation properly reflects the facts and position of each party.~~

~~(4) Immoral conduct related to the teaching profession, under 20-4-110(1)(f), MCA, means:~~

~~(a) Sexual contact, as defined in 45-2-101(60), MCA, or sexual intercourse as defined in 45-2-101(61), MCA, between a teacher, specialist or administrator and a person the teacher, specialist or administrator knows or reasonably should know is a student at a public or private elementary or secondary school;~~

~~(b) Conduct, whether resulting in the filing of criminal charges or not, which would constitute an offense under any of the following statutes of this state;~~

~~(i) 45-5-502, MCA (sexual assault);~~

~~(ii) 45-5-503, MCA (sexual intercourse without consent);~~

~~(iii) 45-5-504, MCA (indecent exposure);~~

~~(iv) 45-5-505, MCA (deviate sexual conduct), if the conduct either was non-consensual or involved a person the teacher, specialist or administrator knows or reasonably should know is a student at a public or private elementary or secondary school;~~

~~(v) 45-5-507, MCA, (incest);~~

~~(vi) 45-5-601, 45-5-602, or 45-5-603, MCA, (offenses~~

involving prostitution);

~~(vii) 45-5-622(2), MCA, (endangering the welfare of children);~~

~~(viii) 45-5-623, MCA, (unlawful transactions with children);~~

~~(ix) 45-5-625, MCA, (sexual abuse of children);~~

~~(x) 45-8-201, MCA, (obscenity);~~

~~(xi) 45-8-202, MCA, (public display of offensive material);~~

~~(xii) Any statute in Title 45, chapter 9, part 1, MCA (dangerous drugs), provided that a first offense under 45-9-102(2), MCA, shall not fall within this definition;~~

~~(c) Repeated convictions for violations of any one or more of the criminal laws of this state, which violations are not otherwise grounds for suspension or revocation, if the repeated convictions, taken together, demonstrate that the teacher, specialist or administrator is unwilling to conform his/her conduct to the requirements of law.~~

~~(d) Occurrences related to ARM 24.9.1003(9), (sexual harassment), defined as "unwelcome sexual advances, requests for sexual favors, and other verbal and physical conduct of a sexual nature" when:~~

~~(i) submission to the conduct is explicitly or implicitly made a term or condition of education,~~

~~(ii) submission to or rejection of the conduct is used as the basis for an educational decision affecting the individual, and/or~~

~~(iii) the conduct has the purpose or effect of unreasonably interfering with school performance or creating an intimidating, hostile or offensive learning environment.~~

AUTH: Sec. 20-4-102, MCA

IMP: Sec. 20-4-110, MCA

10.57.602 NOTICE AND OPPORTUNITY FOR HEARING UPON DETERMINATION THAT SUBSTANTIAL REASON EXISTS TO HOLD A HEARING TO SUSPEND OR REVOKE TEACHER, SPECIALIST OR ADMINISTRATOR CERTIFICATE

(1) On the basis of the preliminary investigation conducted pursuant to [NEW RULE XXIX], the board of public education shall determine whether or not a substantial reason exists to hold a hearing to issue a letter of reprimand or to suspend or revoke the teacher, specialist or administrator certificate license.

(a) If the board determines that no substantial reason exists to hold such a hearing to ~~suspend or revoke the teacher, specialist or administrator certificate~~, the matter is ended.

(b) If the board determines that there is substantial reason to hold such a hearing to ~~suspend or revoke the teacher, specialist or administrator certificate~~, the board shall provide notice of the pending action to the teacher, specialist or administrator, by certified mail not less than 30 days prior to the date of the hearing of the pending action to the teacher, specialist or administrator. Such notice

shall include:

(i) through (c) remain the same.

(d) The board shall enclose with the notice an election form on which the teacher, specialist or administrator shall be asked to indicate whether he/she intends to appear at the hearing and contest the board's proposed action, contest the board's proposed action without appearing at the hearing, or accept the proposed letter of reprimand, suspension or revocation without contesting it. The notice shall require the teacher, specialist or administrator to return the election form within ~~twenty~~ (20) days of the date on which the notice was mailed, and shall inform the teacher, specialist or administrator that failure to return the form in a timely manner ~~will~~ shall result in a letter of reprimand or the suspension or revocation of the certificate license by default.

(e) If the teacher, specialist or administrator does not return the completed election form within 20 days or elects to accept the proposed letter, suspension or revocation without contesting it, the board, at its next meeting, shall suspend or revoke the teacher, specialist or administrator ~~certificate~~ license or shall direct the chair to issue a letter of reprimand.

(f) If the teacher, specialist or administrator elects to contest the proposed letter, suspension or revocation and complies with ~~subsection (1)(d) of this rule~~, the board shall conduct a hearing.

AUTH: Sec. 20-4-102, MCA

IMP: Sec. 20-4-110, MCA

10.57.603 HEARING IN CONTESTED CASES (1) and (1)(a) remain the same.

(b) a hearing before a committee of the board that member(s) who will shall report to the board proposed findings of fact, proposed conclusions of law and a proposed order; or

(c) a hearing before a hearing examiner appointed by the board of public education who ~~will~~ shall report to the board proposed findings of fact, proposed conclusions of law and a proposed order.

(2) At the time and place set in the notice to the teacher, specialist or administrator, the chairperson of the board of public education, the designated committee, ~~or designated board member(s)~~ or an appointed hearing examiner shall conduct the hearing in accordance with Rules 9 through 21 of the attorney general's model rules for hearing contested cases, as found in the Administrative Rules of Montana.

AUTH: Sec. 20-4-102, MCA

IMP: Sec. 20-4-110, MCA

10.57.604 AFTER POST HEARING PROCEDURE BY MEMBER OF THE BOARD/HEARING EXAMINER/BOARD OF PUBLIC EDUCATION (1) After the hearing by the board of public education, the board shall,

as provided herein:

~~(a) adopts findings of fact, conclusion of law and an order either issuing a letter of reprimand or suspending or revoking the teacher, specialist or administrator certificate license; or not suspending or revoking the teacher, specialist or administrator certificate~~

~~(b) dismiss the request for letter of reprimand, revocation or suspension.~~

~~(2) The board shall enter its decision on its minutes and shall serve a copy by certified mail on the party adversely affected teacher, specialist or administrator and on any other involved party.~~

~~(a) When a certificate is suspended or revoked, the superintendent of public instruction shall notify the national educator clearinghouse that formal action has been taken regarding the certificate held by the teacher, specialist or administrator.~~

~~(b) The contents of that record shall be available for review by the certifying authority from other jurisdictions in which the teacher, specialist or administrator seeks certification.~~

AUTH: Sec. 20-2-121, 20-4-102, MCA

IMP: Sec. 20-4-102, 20-4-110, MCA

10.57.605 SURRENDER OF A TEACHER, SPECIALIST OR ADMINISTRATOR CERTIFICATE LICENSE (1) A teacher, specialist or administrator may surrender that certificate his/her license to the superintendent of public instruction. The superintendent of public instruction, upon review, may accept or reject the certificate license surrender.

(2) Surrender of a certificate license to the superintendent of public instruction does not relieve the reporting requirements set forth in 20-4-110(3)(a), MCA.

~~(3) Upon receipt of a surrendered certificate, the superintendent of public instruction shall notify NASDTEC's educator identification clearinghouse that there has been a surrender of the certificate held by the teacher, specialist or administrator.~~

~~(4) (3) The superintendent of public instruction may investigate further following a the surrender of a teacher, specialist or administrator's license and shall maintain a record of the circumstances surrounding the surrender of any certificate license. The contents of that record shall be available for review by the certifying licensing authority from any other jurisdiction in which the teacher, specialist or administrator seeks certification licensure.~~

~~(5) (4) Surrender of a certificate license may prejudice the ability of teacher, specialist or administrator to successfully seek recertification relicensure in Montana in the same or any other educational endorsement.~~

~~(6) (5) The superintendent of public instruction shall provide notice to the board of public education of each surrender of a certificate license and of the circumstances~~

surrounding the surrender.

AUTH: Sec. 20-4-114, MCA
IMP: Sec. 20-2-121, MCA

6. The rules proposed to be amended and transferred to Title 10, Chapter 57, Sub-chapter 6 provide as follows, stricken matter interlined, new matter underlined:

10.57.701 APPEAL FROM DENIAL OF A TEACHER, SPECIALIST OR ADMINISTRATOR CERTIFICATE LICENSE (1) Appeal from the decision of the superintendent of public instruction to deny issuance or renewal of a teacher, specialist or administrator certificate license shall be brought before the board of public education by written request from the applicant to the board received within 30 days of the notice to deny.

(2) remains the same.

(a) summarizes the appellant's responses to the superintendent's denial of a certificate licensure;

(b) and (c) remain the same.

~~(3) Upon receipt of an appeal from the decision of the superintendent of public instruction to deny an initial educator certificate, or reinstatement or renewal of certification, the reporting of the denial "for cause" to the national educator identification clearinghouse shall be in pending status until the board of public education takes action on the appeal. Should the appeal be upheld and the decision of the superintendent be overturned, no report shall be submitted on the action appealed.~~

AUTH: Sec. 20-2-121, 20-4-102, MCA
IMP: Sec. 20-4-102, 20-4-110, MCA

10.57.702 CONSIDERATIONS GOVERNING ACCEPTANCE OF APPEAL IN CASES ARISING UNDER 20-4-104(1)(e), MCA (1) The board of public education ~~will~~ shall not consider an appeal from a denial by the superintendent of public instruction based on 20-4-104(1)(e), MCA, if the appellant has made an appeal to the board from the denial of a teacher, specialist or administrator certificate license within ~~3~~ three years prior to the application which is at issue, ~~which and that~~ appeal was denied by the board following a hearing, unless the appellant can show substantial changes in circumstances relating to ~~his/her~~ the appellant's eligibility for a certificate license.

AUTH: Sec. 20-4-102, MCA
IMP: Sec. 20-4-110, MCA

10.57.703 HEARING ON APPEAL (1) remains the same.

(2) On appeal the burden is on the appellant to establish by a preponderance of the evidence that ~~he/she~~ the appellant satisfies the statutory criteria for issuance of a teacher, specialist or administrator certificate license.

(3) In cases in which the superintendent of public instruction has denied issuance or renewal of a teacher, specialist or administrator certificate license under 20-4-104(1)(e), MCA, the board of public education may require the appellant to undergo ~~at his/her expense~~ a mental or physical examination by a physician or health professional designated by the board. In cases in which the superintendent of public instruction has denied issuance of a new license, the examination shall be at the appellant's expense. In cases in which the superintendent of public instruction has denied issuance of a renewal license, the examination shall be at the superintendent of public instruction's expense. The report of examination shall be admissible evidence in the appeal proceedings before the board, subject to the appellant's right to cross-examine the maker of the report.

AUTH: Sec. 20-4-102, MCA
IMP: Sec. 20-4-102, MCA

7. The Board of Public Education proposes to transfer 10.57.407 CLASS 7 AMERICAN INDIAN LANGUAGE AND CULTURE SPECIALIST to ARM 10.57.434 and 10.57.801 SUBSTANTIAL AND MATERIAL NON-PERFORMANCE to ARM 10.57.611.

8. 10.57.103 GRADES which can be found on page 10-829.1 of the Administrative Rules of Montana, is proposed to be repealed because of the increased reliance on teacher preparation programs to establish criteria to determine satisfactory program completion.

AUTH: Sec. 20-4-102 MCA
IMP: Sec. 20-4-102 MCA

9. 10.57.106 LIFE CERTIFICATES which can be found on page 10-829.1 of the Administrative Rules of Montana, is proposed to be repealed because no life certificates remain in force.

AUTH: Sec. 20-4-102, MCA
IMP: Sec. 20-4-203, MCA

10. 10.57.108 SUBSTITUTE TEACHING which can be found on pages 10-830 and 10-831 of the Administrative Rules of Montana, is proposed to be repealed because it is being replaced with NEW RULE II.

AUTH: Sec. 20-4-102, MCA
IMP: Sec. 20-4-102, MCA

11. 10.57.202 APPROVED PROGRAMS which can be found on page 10-834 of the Administrative Rules of Montana, is proposed to be repealed because approved programs have been defined in ARM 10.57.102 and 10.57.201 to include only those programs accredited by NCATE and/or a state board of

education.

AUTH: Sec. 20-4-102, MCA
IMP: Sec. 20-4-102, MCA

12. 10.57.203 TRAINING EVALUATION which can be found on page 10-834 of the Administrative Rules of Montana, is proposed to be repealed because of the increased reliance on teacher preparation programs to perform transcript analysis to determine program completion and licensure endorsements.

AUTH: Sec. 20-4-102, MCA
IMP: Sec. 20-4-103, MCA

13. 10.57.211A EDUCATOR RECRUITMENT which can be found on page 10-837 of the Administrative Rules of Montana, is proposed to be repealed because the content of this rule is incorporated in ARM 10.57.201.

AUTH: Sec. 20-2-121, MCA
IMP: Sec. 20-4-102, MCA

14. 10.57.213 REPORTING OF DENIAL OF INITIAL CERTIFICATION, OF REINSTATEMENT OR OF RENEWAL OF CERTIFICATION which can be found on page 10-838 of the Administrative Rules of Montana is proposed to be repealed because the content of this rule is contained in NEW RULE XXXI.

AUTH: Sec. 20-2-121, MCA
IMP: Sec. 20-4-102, MCA

15. 10.57.219 CONVERSION FROM RENEWAL CREDITS TO RENEWAL UNITS which can be found on page 10-838.5 of the Administrative Rules of Montana, is proposed to be repealed because the provisions of this rule are no longer applicable due to the passage of time.

AUTH: Sec. 20-4-102, MCA
IMP: Sec. 20-4-108, MCA

16. 10.57.302 COMPUTER ENDORSEMENT REVIEW COMMITTEE which can be found on pages 10-839.2 and 10-839.3 of the Administrative Rules of Montana, is proposed to be repealed because the same terminated on September 1, 1996 pursuant to (9) of the rule.

AUTH: Sec. 20-4-102, MCA
IMP: Sec. 20-4-103, MCA

17. 10.57.401 CLASS 1 PROFESSIONAL TEACHER CERTIFICATE which can be found on pages 10-839.9 of the Administrative Rules of Montana, is proposed to be repealed because the provisions of this rule have been modified and are set forth in NEW RULE IV and NEW RULE V.

AUTH: Sec. 20-4-102, MCA
IMP: Sec. 20-4-106, 20-4-108, MCA

18. 10.57.402 CLASS 2 STANDARD TEACHING CERTIFICATE which can be found on pages 10-840 and 10-840.1 of the Administrative Rules of Montana, is proposed to be repealed because the provisions of this rule have been modified and are set forth in NEW RULE III and NEW RULE V.

AUTH: Sec. 20-4-102, MCA
IMP: Sec. 20-4-106, 20-4-108, MCA

19. 10.57.403 CLASS 3 ADMINISTRATIVE CERTIFICATE which can be found on pages 10-840.1 through 10-840.4 of the Administrative Rules of Montana, is proposed to be repealed because the provisions of this rule have been modified and are set forth in NEW RULE VI, NEW RULE VII, NEW RULE VIII, NEW RULE IX, NEW RULE X, NEW RULE XI and NEW RULE XII.

AUTH: Sec. 20-4-102, MCA
IMP: Sec. 20-4-106, 20-4-108, MCA

20. 10.57.404 CLASS 4 VOCATIONAL CERTIFICATE which can be found on pages 10-840.4 through 10-842 of the Administrative Rules of Montana, is proposed to be repealed because the provisions of this rule have been modified and are set forth in NEW RULE XIII, NEW RULE XIV, NEW RULE XV and NEW RULE XVI.

AUTH: Sec. 20-4-102, MCA
IMP: Sec. 20-4-106, 20-4-108, MCA

21. 10.57.405 CLASS 5 PROVISIONAL CERTIFICATE which can be found on pages 10-843 through 10-845 of the Administrative Rules of Montana, is proposed to be repealed because the provisions of this rule have been modified and are set forth in NEW RULE XVII, NEW RULE XVIII, NEW RULE XIX, NEW RULE X, NEW RULE XXI, NEW RULE XXII, NEW RULE XXIII, NEW RULE XXIV and NEW RULE XXV.

AUTH: Sec. 20-4-102, MCA
IMP: Sec. 20-4-106, 20-4-108, MCA

22. 10.57.406 CLASS 6 SPECIALIST CERTIFICATE which can be found on pages 10-845 through 10-845.2 of the Administrative Rules of Montana, is proposed to be repealed because the provisions of this rule have been modified and are set forth in NEW RULE XXVI, NEW RULE XXVII and NEW RULE XXVIII.

AUTH: Sec. 20-4-102, MCA
IMP: Sec. 20-4-106, 20-4-108, MCA

23. Concerned persons may present their data, views or

arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted by mail to the Board of Public Education, P.O. Box 200601, Helena, Montana 59620-0601, or by e-mail to smeloy@bpe.montana.edu and must be received no later than 5:00 p.m. on October 24, 2002.

24. Steve Meloy has been designated to preside over and conduct the hearing.

25. The Board of Public Education maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding Board of Public Education rulemaking actions. Such written request may be mailed or delivered to the Board of Public Education, P.O. Box 200601, Helena, Montana 59620-0601, faxed to the office at 444-0847 or may be made by completing a request form at any rules hearing held by the Board of Public Education.

26. The bill sponsor requirements of 2-4-302, MCA, do not apply. The requirements of 20-1-501, MCA, have been fulfilled. Copies of these rules have been sent to all tribal governments in Montana.

/s/ Dr. Kirk Miller
Dr. Kirk Miller, Chairman
Board of Public Education

/s/ Steve Meloy
Steve Meloy
Rule Reviewer

Certified to the Secretary of State September 16, 2002.

BEFORE THE BOARD OF SPEECH-LANGUAGE
PATHOLOGISTS AND AUDIOLOGISTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC
adoption of new rule I and the) HEARING ON PROPOSED
repeal of ARM 8.62.413, both) ADOPTION AND REPEAL
pertaining to Speech-Language)
Pathologists and Audiologists)
fees)

TO: All Concerned Persons

1. On October 25, 2002, at 10:00 a.m., a public hearing will be held in room #471, 301 South Park Avenue, Helena, Montana, to consider the proposed adoption and repeal of the above-stated rules.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Speech-Language Pathologists and Audiologists no later than 5:00 p.m., on October 18, 2002, to advise us of the nature of the accommodation that you need. Please contact Helena Lee, Board of Speech-Language Pathologists and Audiologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2385; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsds1p@state.mt.us.

3. The proposed new rule provides as follows:

NEW RULE I FEES (1) Fees are payable to the board of speech-language pathologists and audiologists. The board assumes no responsibility for loss in transit of such remittances. All fees are nonrefundable.

(2) The board has established the following fees:

(a) Application fee for speech-language pathologist and/or audiologist \$50

(b) Original license fee for speech-language pathologist and/or audiologist 50

(c) Renewal fee for speech-language pathologist and/or audiologist 100

(i) Late renewal fees are an additional 10% due each month that the payment of the renewal fee is delayed after the February 1 expiration date. The maximum fee for delayed renewal may not exceed twice the normal renewal fee.

(d) Placement of a license on inactive status for a speech-language pathologist and/or audiologist 50

(e) A combined application and temporary license fee for a speech-pathologist and/or audiologist 50

- (f) Registration for speech-language pathologist aide and/or audiologist aide 30
- (i) Late registration fee for aides is an additional \$20 for registrations made after October 31.
- (g) Replacement or duplication of a license 10
- (3) The yearly registration fee for the unlicensed person shall be consistent with the initial application and license fee for a speech-language pathologist and/or audiologist. The yearly registration fee for an unlicensed person is \$100. The unlicensed person provisions of 37-15-313, MCA, terminate June 30, 2003.

AUTH: 37-1-134 and 37-15-202, MCA
 IMP: 37-15-307, 37-15-308, and 37-15-313, MCA

REASON: The Board has determined that there is reasonable necessity to make the proposed changes in the fees in order to comply with the provisions of 37-1-134, MCA, and keep the fees commensurate with program costs for the Board of Speech-Language Pathologists and Audiologists. The Board has also determined that there is reasonable necessity to adopt a new rule to make it easier for applicants and licensees to readily determine the amount due. In addition, the proposed new rule's format is consistent with the format used by other health care licensing boards, which should make it easier for the general public to use and understand.

A comparison of the old fees with the new fees is as follows:

<u>Description of fee</u>	<u>OLD</u>	<u>NEW</u>
Application	\$25	\$50
Original license	25	50
Renewal [annual]	40	100
late renewal	20	10% monthly interest
Inactive	20	50
Temporary	50	50
Aides registration	20	30
late registration	10	20
Replacement/duplicate license	10	10
Unlicensed person registration	50	100

The Board estimates that approximately 490 persons (340 active licensees, 20 inactive status licensees, 30 new applicants, and 100 registrants) will be affected by the proposed fee changes. The estimated annual increase in revenue is approximately \$23,640. Under the proposed fee schedule, the Board's projected annual revenue is \$40,800. The Board's appropriation for fiscal year 2003 is \$35,635. A legislative audit of the Business Standards Division required that all boards pay their portion of the conversion to the Oracle database system. The Oracle reallocation for the Board is \$10,115 and is additional to the appropriation for the Board. The reallocation is required to be

paid in fiscal year 2003. The Board's recharge was increased by \$6,568. The recharge calculation was based on the Board allocated FTE. The percentage of total board allocated FTE was based on the daily time distribution sheet; personal services charges for the Health Care Licensing Board; personnel allocation without investigator (4 FTE); HCLB Bureau budget; Business Standards Division recharge; and BSD Legal Allocation. The BSD has implemented the alternative pay plan with those increases reflected in the board's recharge. The board last raised its fees in fiscal year 2000.

4. ARM 8.62.413, the rule proposed to be repealed, is as follows:

8.62.413 FEES is found at ARM pages 8-1693 and 8-1694.

AUTH: 37-1-134 and 37-15-202, MCA
IMP: 37-15-307 and 37-15-308, MCA

REASON: The Board has determined that there is reasonable necessity to repeal ARM 8.62.413 to coordinate with the proposed adoption of NEW RULE I.

5. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Speech-Language Pathologists and Audiologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsds1p@state.mt.us and must be received no later than 5:00 p.m., October 25, 2002.

6. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at <http://discoveringmontana.com/dli/bsd> under the Board of Speech-Language Pathologists and Audiologists rule notice section. The Department strives to make the electronic copy of this Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the comment forum does not excuse late submission of comments.

7. The Board of Speech-Language Pathologists and Audiologists maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of

the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Speech-Language Pathologists and Audiologists administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Speech-Language Pathologists and Audiologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2323, e-mailed to dlibsdsplp@state.mt.us or may be made by completing a request form at any rules hearing held by the agency.

8. The Board of Speech-Language Pathologists and Audiologists will meet immediately following the rules hearing, October 25, 2002, to begin deliberation and consideration of the public comments received on the proposed adoption and repeal. Members of the public are welcome to listen to the board deliberations, but the Board cannot accept any comments concerning the proposed adoption and repeal beyond the October 25, 2002, 5:00 p.m. deadline.

9. The Board of Speech-Language Pathologists and Audiologists will meet via telephone conference call at 9:00 a.m., November 14, 2002, to consider the comments made by the public, the proposed responses to those comments, and take final action on the proposed adoption and repeal. Members of the public are welcome to listen to the conference call at the Board's offices, Room 430, 301 South Park Avenue, Helena, Montana, and listen to the Board's deliberations, but the Board cannot accept any comments concerning the proposed adoption and repeal beyond the October 25, 2002, 5:00 p.m. deadline.

10. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

11. Darcee Moe, attorney, has been designated to preside over and conduct this hearing.

BOARD OF SPEECH-LANGUAGE
PATHOLOGISTS AND AUDIOLOGISTS
MARILYN THADEN, CHAIR

/s/ WENDY J. KEATING
Wendy J. Keating, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

/s/ Kevin Braun
Kevin Braun,
Rule Reviewer

Certified to the Secretary of State September 16, 2002

BEFORE THE BOARD OF LAND COMMISSIONERS
OF THE STATE OF MONTANA

In the matter of the adoption)
of NEW RULES I through L)
relating to state forest land)
management)

NOTICE OF PUBLIC HEARING
ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On November 4, 6, and 7, 2002, at 6:30 p.m., public hearings will be held to consider the adoption of NEW RULES I through L relating to State Forest Land Management. The hearings will be conducted on the following dates at the following locations:

November 4 Department of Fish, Wildlife
and Parks
1420 East 6th Avenue
Helena, MT 59620

November 6 Department of Fish, Wildlife
and Parks
3201 Spurgin Road
Missoula, MT 59804

November 7 Department of Fish, Wildlife
and Parks
490 North Meridian Road
Kalispell, MT 59901

2. The State Board of Land Commissioners will make reasonable accommodations for persons with disabilities who wish to participate in these public hearings or need an alternative accessible format of this notice. If you require an accommodation, contact the agency no later than 5:00 p.m. on October 11, 2002, to advise us of the nature of the accommodation that you need. Please contact Pete Van Sickle, Forest Management Bureau Chief, Department of Natural Resources and Conservation, 2705 Spurgin Road, Missoula, MT 59804-3199; telephone (406) 542-4306; FAX (406) 542-4217; e-mail to pvansickle@state.mt.us.

3. The rules as proposed to be adopted provide as follows:

NEW RULE I ACCOUNTABLE PARTIES (1) The trust land management division of the department of natural resources and conservation shall implement the rules as outlined in this sub-chapter to provide field personnel with consistent policy, direction, and guidance for the management of forested state trust lands.

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA
IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

NEW RULE II GENERAL APPLICABILITY (1) The state forest land management rules, [NEW RULE III] through [NEW RULE L], shall apply to forest management activities on all forested state trust lands administered by the department.

(2) The department shall not require that [NEW RULE III] through [NEW RULE L] be implemented on projects that, prior to the adoption of the rules, have gone through the MEPA public scoping process, except the department shall review those timber sales where old growth was proposed for harvesting that were developed using the state forest land management plan biodiversity guidance of 1998 to ensure compliance with [NEW RULES IV through XIX].

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA
IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

NEW RULE III DEFINITIONS Unless the context otherwise requires, the words defined shall have the following meaning when found in these rules:

(1) "Abandoned road" means a road that is permanently closed because it is not intended for use for future forest management activities or motorized vehicles and is left in a condition that provides adequate stability and surface drainage without periodic maintenance.

(2) "Active bald eagle nest" means any bald eagle nest that either:

(a) is known to be occupied by a breeding pair; or

(b) has been occupied by nesting bald eagles within the past five years.

(3) "Adjacent wetland" means a wetland located within a streamside management zone established under ARM 36.11.302. Adjacent wetlands are located immediately adjacent to streams, lakes or other bodies of water.

(4) "Administrative use" means any activities associated with project preparation, planting, pre-commercial thinning, project administration, forest inventory, monitoring, salvage, prescribed burning, slash disposal, on-site license or lease administration, and maintenance activities.

(5) "Bald eagle home range" means a circular area having a radius of 2.5 miles around all nest sites that have been active within five years or as defined in a bald eagle site-specific plan.

(6) "Bald eagle nest site area" means a circular area having a radius of 0.25 mile around active or alternate nests that have been active within five years or as defined in a bald eagle site-specific plan.

(7) "Bald eagle primary use area" means the circular area extending from 0.25 mile to 0.5 mile from active and alternate nests or as defined in a bald eagle site-specific plan. The exact configuration of this area may be altered upon consultation with a department biologist, if geographic

conditions allow. The intention is to best approximate the area frequented by nesting eagles. Lacking other data or consultation, the 0.25 to 0.5 mile area shall be used.

(8) "Bald eagle site-specific plan" means a site-specific plan for isolated breeding areas or unique situations that are developed for resolution of conflicts. Such plans are completed only after an intensive research effort designed to determine home range, activity patterns, perch and roost areas, food habits, foraging areas, and responses to human activity of specific pairs.

(9) "Bear management unit or BMU" means an area which meets yearlong habitat needs of both male and female grizzly bears as determined by the department.

(10) "Best management practices or BMP's" means a practice or set of practices adopted and prescribed by the state of Montana as the most effective and practical means of providing minimum water quality protection for forestry operations.

(11) "Black-backed woodpecker habitat" means fire-killed stands of trees greater than 40 acres, less than five years since disturbance, and with greater than 40 trees per acre that are greater than or equal to nine inches DBH.

(12) "Broadcast burning" means spreading fire through a continuous fuel cover. The fuels consist of slash resulting from forest practices, surface litter, and duff. Fuels are left in place, fairly uniform, and ignited under certain conditions with the intent to meet planned management objectives in the desired area.

(13) "Categorical exclusion" refers to a type of action that does not individually, collectively, or cumulatively require an environmental assessment or environmental impact statement unless extraordinary circumstances occur.

(14) "Class 1 stream segment" means:

(a) a portion of stream that supports fish; or

(b) a portion of stream that:

(i) normally has surface flow during six months of the year or more; and

(ii) contributes surface flow to another stream, lake or other body of water.

(15) "Class 2 stream segment" means a portion of a stream that is not a class 1 or class 3 stream segment. Two common examples of class 2 stream segments are:

(a) a portion of stream that:

(i) does not support fish;

(ii) normally has surface flow during less than six months of the year; and

(iii) contributes surface flow to another stream, lake or other body of water; or

(b) a portion of stream that:

(i) does not support fish;

(ii) normally has surface flow during six months of the year or more; and

(iii) does not contribute to another stream, lake or other body of water.

- (16) "Class 3 stream segment" means:
- (a) a portion of a stream that does not support fish;
 - (b) normally has surface flow during less than six months of the year; and
 - (c) rarely contributes surface flow to another stream, lake or other body of water.
- (17) "Coarse woody debris or CWD" means dead woody material such as stems or limbs, generally larger than three inches in diameter.
- (18) "Connectivity" means:
- (a) the extent to which conditions exist or should be provided between separate forest areas to ensure habitat for breeding, feeding, or movement of wildlife and fish within their home range or migration areas; or
 - (b) regarding management of lynx and fisher habitat, stand conditions where sapling, pole, mature, or old stands possess greater than 39% crown canopy closure, in a patch greater than 300 feet wide.
- (19) "Denning period" (grizzly bear) means the period from November 16 through March 31.
- (20) "Department" means the department of natural resources and conservation.
- (21) "Desired future condition" means the land or resource conditions that will exist if goals and objectives are fully achieved. It is considered synonymous with appropriate conditions.
- (22) "Diameter at breast height or DBH" means the diameter of the stem of a tree measured at 4.5 feet from the ground.
- (23) "Facultative plants" means plants that are equally likely to occur in wetlands and non-wetlands (34 to 66% estimated probability).
- (24) "Facultative wetland plants" means plants that usually occur in wetlands (67 to 99% estimated probability) but are occasionally found in non-wetlands.
- (25) "Flammulated owl preferred habitat types" means regionally accepted climax vegetation classifications denoted by the following acronyms:
- (a) PIPO (Pinus ponderosa)-all types;
 - (b) PSME (Pseudotsuga menziesii)/AGSP (Agropyron spicatum);
 - (c) PSME/FEID (Festuca idahoensis);
 - (d) PSME/FESC (Festuca scabrella);
 - (e) PSME/SYAL (Symphoricarpos albus);
 - (f) PSME/PHMA (Physocarpus malvaceus);
 - (g) PSME/VACA (Vaccinium caespitosum);
 - (h) PSME/CARU (Calamagrostis rubescens);
 - (i) PSME/SPBE (Spiraea betulifolia); and
 - (j) PSME/ARUV (Arctostaphylos uva-ursi).
- (26) "Forest management activities" means activities or operations normally associated with the management of department administered forest land including:
- (a) timber harvest;
 - (b) salvage harvest;

- (c) thinning;
- (d) control and disposal of slash;
- (e) prescribed burning;
- (f) site preparation;
- (g) reforestation;
- (h) weed control;
- (i) road construction;
- (j) road maintenance;
- (k) inventory;
- (l) monitoring; and
- (m) grazing of classified forest lands.

(27) "Grizzly BMU sub-unit" means an administrative area designation related to grizzly bear recovery that approximates the home range size of a female grizzly bear.

(28) "Habitat type group or HTG" means a collection of land areas potentially capable of producing similar plant communities at climax, generally named for the predicted climax community type.

(29) "Hiding cover" means vegetation that provides visual screening capable of obstructing from view 90% of an adult grizzly bear at 200 feet.

(30) "Human activity (high intensity)" means any human use or activity associated with:

- (a) frequent and/or intensive public recreation;
- (b) heavy equipment use;
- (c) aerial yarding;
- (d) blasting;
- (e) logging;
- (f) log hauling;
- (g) pre-commercial thinning;
- (h) road construction;
- (i) site alteration; or
- (j) site development.

(31) "Human activity (low intensity)" means any minor human use or activity associated with:

- (a) dispersed and/or infrequent public recreation;
- (b) project preparation;
- (c) short-duration activities associated with site alteration or site development; and
- (d) planting.

(32) "Hydric soils" means soils that are formed under conditions of:

- (a) saturation;
- (b) flooding; or
- (c) ponding long enough during the growing season to develop anaerobic conditions in the upper soil horizons.

(33) "Investments" means the department's internal investments in forested state trust lands. These investments may include items such as:

- (a) silvicultural prescriptions;
- (b) road construction and maintenance;
- (c) plantation establishment and maintenance;
- (d) wildlife habitat structures; and
- (e) public recreation.

(34) "Isolated wetland" means a wetland that does not intercept or lie within a SMZ boundary.

(35) "Lake" means a body of water:

(a) where the surface water is retained by either natural or artificial means;

(b) where the natural flow of water is substantially impeded; and

(c) which supports fish.

(36) "Lynx denning habitat" means mature forest within lynx habitat with numerous downed logs occurring in at least five-acre patches. Younger successional stages offer denning habitat where CWD amounts are high, such as areas with extensive timber blow down.

(37) "Lynx habitat" means forest lands comprised of subalpine fir or hemlock habitat types, and moist Douglas-fir, grand fir, western red cedar, and engelmann spruce habitat types where they are intermixed with appreciable amounts of subalpine fir habitat types. Cover types may be mixed species composition (subalpine fir, hemlock, engelmann spruce, Douglas-fir, grand fir, western larch, lodgepole pine and hardwoods), and stands dominated by lodgepole pine.

(38) "Lynx non-habitat" means:

(a) definable winter ranges normally used by high concentrations of big game animals and associated predators regardless of habitat type; or

(b) the following habitat types:

(i) ponderosa pine and dry Douglas-fir;

(ii) limber pine;

(iii) whitebark pine;

(iv) water;

(v) rock; and

(vi) permanent non-forest areas.

(39) "Mature foraging habitat (lynx)" means sawtimber stands within lynx habitat that possess moderate or well-stocked coniferous understory vegetation.

(40) "Mechanized activity" means all activities associated with:

(a) chainsaw operation and timber felling;

(b) pre-commercial thinning;

(c) motorized vehicle trips associated with administrative uses;

(d) skidding and ground-based yarding operations;

(e) aerial yarding;

(f) mechanized road construction and maintenance;

(g) log loading;

(h) log processing; and

(i) log hauling.

(41) "Moderately stocked" means forest stand density described by crown closure of 40 to 69%.

(42) "Motorized trails" means a trail without restrictions on motorized use and which legally allows use by motorized vehicles. Trails used by four-wheel-drive vehicles and motorized trail bikes are examples of this type of access route.

(43) "Non-denning period" (grizzly bear) means the period April 1 through November 15.

(44) "Obligate wetland plant" means plants that possess a greater than 99% probability of occurring in wetlands under natural conditions.

(45) "Old growth" means forest stands that meet or exceed the minimum number, size, and age of those large trees as noted in "Old-Growth Forest Types of the Northern Region" by P. Green, J. Joy, D. Sirucek, W. Hann, A. Zack, and B. Naumann (1992, USFS Northern Region, internal report).

(46) "Old growth maintenance" means silviculture treatments in old growth stands designed to retain old growth attributes, including large live trees, snags and CWD, but that would remove encroaching shade-tolerant species, create small canopy gaps generally less than one acre in size, and encourage regeneration of shade-intolerant species. This type of treatment is applicable on sites that historically would be characterized by mixed severity fire regimes, either relatively frequent or infrequent.

(47) "Old growth restoration" means silviculture treatments in old growth stands designed to reduce stand risk to loss by natural disturbance agents and return them to historic levels of stocking, and/or species composition. Generally, it involves removal of shade-tolerant species, reductions in stand density, and retention of most large shade-intolerant species. This type of treatment is applicable on sites that historically would be characterized by frequent non-lethal fire regimes.

(48) "Open road" means either:

(a) a road or established trail without restriction on motorized vehicle use;

(b) a road that would otherwise meet the definition of a restricted road, but that receives ongoing use of, on average, greater than six vehicle passes per week (e.g., for administrative or commercial purposes), termed low-level use; or

(c) a road that would otherwise meet the definition of a restricted road, but receives greater than low-level use for greater than 30 days duration.

(49) "Open road density" means the percentage of a defined grizzly bear analysis area that exceeds one mile of open road or motorized trail per square mile.

(50) "Other body of water" means ponds and reservoirs greater than 1/10th acre that do not support fish; and irrigation and drainage systems draining directly into a stream, lake, pond, reservoir or other surface water. Water bodies used solely for treating, transporting, or impounding pollutants shall not be considered surface water.

(51) "Other habitat (lynx)" means forest lands in lynx habitat that do not meet the habitat definitions for denning, mature foraging, young foraging, or temporary non-lynx habitat, but serve to provide cover to facilitate movement and acquisition of alternative prey species, such as red squirrels.

(52) "Patch" means a contiguous area of vegetation similar in characteristics of interest, such as tree height, stocking, species composition, or age class. The patch can be composed of a stand, a part of a stand, or many stands.

(53) "Pileated woodpecker preferred habitat" means live, mature cottonwood stands and mature conifer forests with overstory canopies dominated by large-sized western larch or ponderosa pine, and containing Douglas-fir, large snags and CWD.

(54) "Pre-commercial thinning" means the removal of trees not for immediate financial return but to reduce stocking to concentrate growth on the more desirable trees.

(55) "Preferred fisher cover types" means cover types occurring at elevations below 6,000 feet that include:

- (a) western larch/Douglas-fir;
- (b) western white pine;
- (c) mixed conifer;
- (d) western red cedar;
- (e) engelmann spruce;
- (f) Douglas-fir cover types where the species of

secondary abundance is:

- (i) engelmann spruce;
- (ii) grand fir; or
- (iii) western red cedar.

(56) "Project analysis area" means an area selected for analysis of a proposed action for project development under the Montana Environmental Policy Act (MEPA).

(57) "Rendezvous site" means a gathering site for members of a wolf pack used primarily for pup rearing during the summer and occasionally for security during the fall or early winter.

(58) "Restricted road" (in areas other than grizzly security core) means a road on which motorized vehicle use shall be restricted seasonally or yearlong.

(a) Such roads require physical obstruction, generally a gate, and motorized vehicle use is legally restricted.

(b) Low-level motorized administrative use by personnel of resource management agencies, their contractors, and their permittees shall be acceptable. Low-levels are defined as:

(i) ongoing use of, on average, less than seven vehicle passes per week; or

(ii) use greater than six vehicle passes per week, but for a duration of less than 31 days.

(c) The following uses shall be allowed on restricted roads, and shall not be considered in calculation of use level:

- (i) fire suppression;
- (ii) unforeseen events involving human safety;
- (iii) monitoring;
- (iv) tree planting; and
- (v) prescribed burning.

(59) "Road" means all created or evolved routes that are greater than 500 feet long, which are reasonably and prudently drivable with a conventional passenger car or pickup.

(60) "Road closure" means gates, berms, debris, or other facilities necessary to close existing roads to motorized public use.

(61) "Road construction" means cutting and filling of earthen material that results in a travel-way for wheeled vehicles.

(62) "Road in security core areas" (grizzly bear) means roads within security core areas that have permanent closure devices (unless the security core designation is removed).

(a) Examples of such closure devices shall include but are not limited to:

- (i) tank traps;
- (ii) large boulders; and
- (iii) dense vegetation.

(63) "Road maintenance" means maintenance and repair of existing roads that are accessible to motorized use, including but not limited to:

- (a) blading;
- (b) reshaping; or
- (c) resurfacing the road to its original condition;
- (d) cleaning culverts;
- (e) restoring and perpetuating road surface drainage features; and
- (f) clearing the roadside of brush.

(64) "Road reconstruction" means upgrading road to accommodate proposed use.

(65) "Salvage" means the removal of dead trees or trees being damaged or killed by injurious agents other than competition, to recover value that would be otherwise lost.

(66) "Saplings" means trees with DBH from one to 4.99 inches.

(67) "Sawtimber" means size class comprised of trees greater than or equal to nine inches DBH.

(68) "Seasonally secure area" means an area of high seasonal habitat quality that is seasonally secure from:

- (a) motorized access and high non-motorized use; and
- (b) approximates in size that portion of a female grizzly bear's home range where a concentration of use is expected to occur.

(69) "Security core areas" means areas typically greater than 2,500 acres that during the non-denning period:

- (a) are free of motorized access;
- (b) consider the geographic distribution of seasonal habitats important to grizzly bears;
- (c) remain in place for long periods, preferably 10 years; and
- (d) are at least 0.3 mile from the nearest access route that can be used by a motorized vehicle.

(70) "Seedling" means trees with DBH less than one inch.

(71) "Silvicultural systems" means treatments applied to forest stands to accomplish specific goals.

- (a) This term includes, but is not limited to:
 - (i) even-aged regeneration treatments;
 - (ii) uneven-aged treatments; and

(iii) commercial thinning.

(72) "Silviculture" means the art and science of managing trees and forests for specific objectives. Silviculture entails the manipulation of forest and woodland vegetation in stands and on landscapes to meet the diverse needs and values of landowners and society on a sustainable basis.

(73) "Simple linear calculation" means road mile distance divided by the number of 640 acre sections in a given analysis area.

(74) "Site index" means the height of free to grow trees at a specific base age of 50 years.

(75) "Site potential tree height" means the average height of the dominant or co-dominant trees of a stand for a given age based on site index.

(76) "Sites with high erosion risk" means sites located on highly erodible soils or subject to conditions that result in higher risk of erosion.

(a) Examples of highly erodible soils are non-cohesive sands such as:

(i) granitics; and

(ii) silts with low rock content.

(b) Conditions leading to high erosion risk include:

(i) those areas that are susceptible to mass wasting;

(ii) those areas already exhibiting high levels of erosion; or

(iii) severely burned areas where:

(A) bare mineral soil is exposed; or

(B) hydrophobic conditions occur.

(77) "Slash" means the woody debris that is dropped to the forest floor during forest practices and consists of:

(a) stems;

(b) branches;

(c) twigs; and

(d) leaves.

(78) "Stream" means a natural watercourse of perceptible extent that has a generally sandy or rocky bottom or definite banks and that confines and conducts continuously or intermittently flowing water.

(79) "Streamside management zone or SMZ" means the stream, lake or other body of water and an adjacent area of varying width where management practices need to be modified if they might affect wildlife habitat, water quality, fish, or other aquatic resources. The SMZ encompasses a strip at least 50 feet wide on each side of a stream, lake, or other body of water, measured from the ordinary high-water mark, and extends beyond the high-water mark to include wetlands and areas that provide additional protection in zones with steep slopes or erosive soils.

(80) "Take" means to:

(a) harass;

(b) harm;

(c) pursue;

(d) hunt;

(e) shoot;

- (f) wound;
- (g) kill;
- (h) trap;
- (i) capture;
- (j) collect a threatened or endangered species; or
- (k) attempt to engage in any such conduct.
- (81) "Temporary non-lynx habitat" means:
 - (a) seedling stands;
 - (b) sapling to old age class stands with less than 40% canopy closure;
 - (c) non-stocked clearcuts; and
 - (d) stand-replacement burns which are likely to develop future habitat characteristics through forest succession that are important to lynx.
- (82) "Total road density" means the percentage of a defined grizzly bear analysis area that exceeds two miles of:
 - (a) open roads;
 - (b) restricted roads; or
 - (c) motorized trails per square mile.
- (83) "Unique and rare habitats" means a designation applied to areas of wetlands, caves, archeological sites, patches of threatened or endangered plants, or as required by state or federal law.
- (84) "Visual obstruction" means that at least 90% of an adult grizzly bear is hidden from view.
- (85) "Visual screening" (grizzly bear) means vegetation and/or topography providing visual obstruction that makes it difficult to see into adjacent areas from the roadbed. The distance required to provide visual screening, typically 100 feet, is dependent upon the type and density of cover available.
- (86) "Water quality limited water body" means a water body considered by the Montana department of environmental quality to be impaired, and included on the most recent version of the Montana 303(d) list.
- (87) "Well stocked" means stands with:
 - (a) seedlings up to 0.99 inch DBH occurring at densities greater than 600 trees per acre;
 - (b) sapling trees one to 4.99 inches DBH occurring at densities greater than 300 trees per acre;
 - (c) pole trees five to 8.99 inches DBH providing crown canopy densities of greater than 69%; or
 - (d) sawtimber trees greater than or equal to nine inches DBH providing a crown canopy density of greater than 69%.
- (88) "Wetland management zone or WMZ" means a specified area adjacent to and encompassing an isolated wetland or adjacent to a wetland located next to a stream, lake, or other body of water where specific resource protection measures are implemented.
- (89) "Wetlands" means those areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions.
 - (a) Wetlands include:

- (i) marshes;
- (ii) swamps;
- (iii) bogs; and
- (iv) similar areas.

(90) "Young foraging habitat" (lynx) means conifer seedling and sapling stands within lynx habitat with average height greater than or equal to six feet and density greater than or equal to 4,000 stems per acre.

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA
IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

NEW RULE IV BIODIVERSITY - COARSE FILTER APPROACH

(1) The department shall promote biodiversity by taking a coarse filter approach thereby favoring an appropriate mix of stand structures and compositions on state lands. The department shall consider the following ecological characteristics when determining appropriate stand structures and compositions:

- (a) land type;
- (b) climatic section;
- (c) habitat type;
- (d) cover type;
- (e) disturbance regime; and
- (f) unique characteristics.

(2) For coarse filter applications, the department shall describe forests and stands using these characteristics:

- (a) forest composition;
- (b) age class distributions; and
- (c) stand structure.

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA
IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

NEW RULE V BIODIVERSITY - DESIRED FUTURE CONDITIONS

(1) The department shall base an appropriate mix of stand composition conditions on a site-specific model that incorporates ecological characteristics through habitat and cover types, to the extent data are available. When run at the administrative unit level, the model describes a desired future condition in terms of cover type representation. The cover types defined are white pine, ponderosa pine, Douglas-fir, western larch/Douglas-fir, lodgepole pine, mixed conifer, and subalpine types.

(a) The model indicates the approximate number of acres of each cover type that represents a desired future condition for the unit as a whole. Treatments shall be determined at the project level. The department shall use local knowledge to improve estimates as necessary, such as identification of hardwood cover types as a desired future condition.

(b) The department shall not have firm targets for age class distributions. The department shall consider stands in all age classes for treatment to promote appropriate conditions. Achieving biodiversity goals at the landscape

level involves the presence of stands in all age classes.

(c) The department shall select desired future stand structural conditions at the project level, and shall consider disturbance regimes in terms of frequency and severity (see [NEW RULE VIII]). The department shall assess stand structure at the project level and track quantities of various structures at the unit level, to the extent data are available.

(i) The department shall use the stand structure definitions as described in the department's stand level inventory.

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA
IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

NEW RULE VI BIODIVERSITY - FINE FILTER APPROACH

(1) Because it cannot assure that the coarse filter approach will adequately address the full range of biodiversity, the department shall also employ a fine filter approach for threatened, endangered, and sensitive species (see [NEW RULES XXVIII through XLII]), that focuses on a single species' habitat requirements to the extent consistent with the Endangered Species Act, 16 U.S.C Sections 1531 through 1544 and 77-5-116, MCA.

(a) The department shall manage for a desired future condition that promotes a diversity of habitat conditions beneficial to wildlife. The fine filter shall support habitat requirements of threatened, endangered, and sensitive wildlife and plant species. Where the coarse filter and fine filter appear to be at odds, the department shall move toward the conditions defined in [NEW RULE V] consistent with its fiduciary obligations owed to the trust beneficiary.

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA
IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

NEW RULE VII BIODIVERSITY - MANAGEMENT ON BLOCKED LANDS

(1) Within areas of large, blocked ownership, the department shall manage for a desired future condition that can be characterized by the proportion and distribution of forest types and structures historically present on the landscape. The department is not committing to historical proportions or distributions of stand age classes.

(2) A typical analysis unit shall be the administrative unit wherein the department shall focus on maintaining or restoring a semblance of the forest conditions that would have naturally been present given topographic, edaphic, and climatic characteristics of the area, and considering fiduciary and other obligations.

(a) Among the forest conditions the department shall typically consider are:

- (i) successional stage;
- (ii) species composition;
- (iii) stand structure;

- (iv) patch size and shape;
 - (v) habitat connectivity and fragmentation;
 - (vi) disturbance regime;
 - (vii) old-growth distribution and attribute levels;
- and
- (viii) habitat type.

(3) The department shall design timber harvests to promote long-term, landscape-level diversity through an appropriate representation of forest conditions across the landscape as described in [NEW RULE IV]. Where state ownership contains forest conditions made rare on adjacent lands by the management activities of others, the department may not necessarily maintain those conditions in amounts sufficient to compensate for their loss when assessed over the broader landscape, except as it coincides with other agency objectives.

(a) However, if state ownership contains rare or unique habitat elements, as previously defined in [NEW RULE III] occurring naturally, the department shall consider managing so as to retain those elements, to the extent it is consistent with fiduciary duties owed to the beneficiary.

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA
IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

NEW RULE VIII BIODIVERSITY - SELECTION OF SILVICULTURAL SYSTEMS (1) Selection of silvicultural systems shall typically be based on natural disturbance regimes. The three predominant regimes are:

- (a) stand-replacement fire;
- (b) mixed severity fire; and
- (c) non-lethal fire.

(2) Other disturbance mechanisms which may be predominant on a site and shall be considered when selecting treatments include, but are not limited to:

- (a) insects;
- (b) disease; and
- (c) wind.

(3) The department shall consider the range of disturbance regimes possible for any site to avoid inflexible and inappropriate treatments.

(4) The department shall consider objectives that may suggest emulating a disturbance event that does not adhere to the predominant regime.

(5) When emulating a stand-replacement disturbance, the department shall leave some scattered or clumped standing live trees. Silvicultural systems that equate to stand-replacement are clearcut and seed tree.

(a) The department shall consider the patchy distribution of surviving trees following natural disturbance, and emulate that condition to the extent practicable.

(b) Actual numbers and distribution of live trees retained in emulations of stand replacement disturbances shall be site-specifically determined (see [NEW RULE XI]).

(c) Larger proportions of early successional stands will typically be present with these regimes than with other regimes.

(6) Silvicultural systems that emulate mixed severity regimes are modified shelterwood and group selection.

(a) Retained trees shall be from among those that would most likely have survived the disturbance, and in an arrangement typical for the disturbance, as appropriate for meeting fiduciary and project-level objectives.

(b) With most mixed severity treatments, the department shall open the stand enough for natural regeneration of shade intolerant species, or sufficiently so that inter-planted seedlings have the opportunity to survive.

(c) Clumps of small shade tolerant species may be appropriate for retention.

(d) Greater range in stand variability is typical of this regime, including clumps of similar age classes within multi-aged stands.

(7) Selection harvests shall be designed or developed to maintain uneven-aged conditions when emulating non-lethal underburns.

(a) The department shall design these treatments to ensure regeneration of shade intolerant species through natural regeneration or through planting of desired species.

(b) This regime will have higher proportions of older age classes and fewer early successional stands.

(c) The department shall generally avoid treatments that attempt to impose uneven-aged conditions on areas that traditionally existed in an even-aged condition.

(8) The department shall design selection systems or commercial thinnings when emulating single-tree or gap replacement disturbances. Such treatments do not fit within typical fire based disturbance regimes, but shall be used by the department as determined applicable at the project level. In such cases, the department does not expect regeneration of shade intolerant species and may not desire regeneration of any species. Two potential situations for this type of treatment are:

(a) commercial thinning to promote growth of residual trees; or

(b) individual tree selection in mixed stands of shade-tolerant species where, under natural conditions, individual trees died and subsequently fell, creating a gap in the canopy.

(9) Where fire is the predominant disturbance mechanism, the department shall consider:

(a) how fire may have burned in a particular location, and under site-specific conditions including:

- (i) topography;
- (ii) climatic zones; and
- (iii) prevailing winds.

(b) using existing stand boundaries from previous fires to enhance a natural appearance, to the extent they coincide with boundaries expected from natural disturbance regimes.

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA
IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

NEW RULE IX BIODIVERSITY - SALVAGE HARVESTING

(1) Salvage of dead and dying material shall be conducted pursuant to 77-5-207, MCA. Salvage shall occur using site-specific assessment of the economic and ecological consequences, when the material left will be taken by firewood cutters, contribute to spread of insect and disease problems, or pose a human safety concern. The department shall recognize the role this material plays in maintaining biodiversity.

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA
IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

NEW RULE X BIODIVERSITY - NUTRIENT RETENTION (1) For

nutrient retention purposes, treatments shall minimize the amount of fine branches and leafy material removed from the site.

(2) Whole tree skidding shall be discouraged, unless measures are taken to retain nutrients on site.

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA
IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

NEW RULE XI BIODIVERSITY - SNAGS AND SNAG RECRUITS

(1) The department shall retain snags and snag recruits in all harvest units involving live timber, including seed tree removals, fire, and other salvage operations as follows:

(a) On the warm and moist HTG and the wet HTG, the department shall retain an average of approximately two snags and two snag recruits over 21 inches DBH, per acre.

(b) On all other HTG, the department shall retain an average of approximately one snag and one snag recruit over 21 inches DBH, per acre.

(c) In all cases, if snags or recruits over 21 inches DBH are not present, the next largest size snag or recruit shall be retained.

(d) Retained snags and recruits may be evenly distributed or clumped.

(e) If there is an absence of sufficient snags or recruits, some substitution between the two may occur.

(f) Cull trees shall qualify as recruits provided they do not contribute to:

- (i) insect and disease problems;
- (ii) pose a human safety issue; or
- (iii) present concerns over dysgenic practices.

(g) The department shall consider snag quantities in adjacent, unharvested stands as substitutes for those retained in the harvest unit as determined at the project level.

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA
IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

NEW RULE XII BIODIVERSITY - MANAGEMENT AT THE URBAN/FOREST LAND INTERFACE (1) In some areas, such as the urban/forest land interface, the department may diverge from other forest management rules as defined in [NEW RULES IV through L], if the following overriding concerns are identified at the project level:

- (a) public safety;
- (b) fire hazard; or
- (c) lost revenue.

(2) The department shall consider the consequences of retaining snags and snag recruits that may be readily removed by the public for firewood, or that pose a public safety hazard.

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA
IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

NEW RULE XIII BIODIVERSITY - RETENTION OF CULL MATERIAL

(1) Cull live trees, and cull snags (less than 33% sound for both live trees and snags) shall be retained giving due consideration to safety issues, and stand health.

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA
IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

NEW RULE XIV BIODIVERSITY - RETENTION OF COARSE WOODY DEBRIS (1) Adequate CWD shall be left on site to facilitate nutrient conservation and cycling, and other considerations.

(2) CWD retention amounts shall be determined at the project level using appropriate technical references as determined by the department.

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA
IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

NEW RULE XV BIODIVERSITY - PATCH SIZE AND SHAPE (1) The department shall emulate natural spatial patterns of patch size and shape to the extent practicable. Underlying processes and their resultant pre-management patterns shall be taken into account in design of projects while recognizing that previous management activities may have altered the landscape through fragmentation or disruption of linkages. The department shall consider the effects of fragmentation and connectivity at the project level.

(2) The department shall consider other factors that influence the ability to emulate natural spatial patterns, including public sentiments, and other resources.

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA
IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

NEW RULE XVI BIODIVERSITY - MANAGEMENT ON SCATTERED LANDS (1) On areas of smaller, and/or scattered ownership, the department shall base management on restoring a semblance

of historic conditions within state ownership.

(2) Where state ownership contained forest conditions made rare on adjacent lands due to the management activities of others, the department shall not necessarily maintain those conditions in amounts sufficient to compensate for their loss when assessed over the broader landscape, except as it coincides with other department objectives.

(3) However, if state trust lands contain rare or unique habitat elements occurring naturally (e.g., bog, patches of a rare plant), the department shall consider managing so as to retain those elements.

(4) On scattered parcels, treatments shall be determined at the project level.

(5) The department shall apply the model referred to under [NEW RULE IV] at the administrative unit level, to the extent data are available.

(6) Silvicultural considerations listed under [NEW RULE IV through XV, and [NEW RULES XVII AND XVIII] shall be applicable with [NEW RULE XVI].

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA
IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

NEW RULE XVII BIODIVERSITY - COOPERATIVE PLANNING

(1) The department shall make reasonable efforts, in its sole discretion, to pursue cooperative planning with major adjoining landowners. The objectives of cooperative planning shall be to maintain appropriate amounts and distribution of stand structures and species mixtures to promote biodiversity at a landscape level, and to equitably maintain or promote trust revenue opportunities over the long-term.

(a) Cooperative plans shall be evaluated as needed, to monitor how successfully they are being implemented, and to determine if continued participation is warranted.

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA
IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

NEW RULE XVIII BIODIVERSITY - OLD GROWTH MANAGEMENT

(1) The department shall manage old growth to meet biodiversity and fiduciary objectives, pursuant to 77-5-116, MCA. The department shall consider the role of all stand age classes in the maintenance of biodiversity when designing harvests and other activities.

(a) The department shall identify old growth that occurs in a project area. Old growth stands shall be managed to achieve biodiversity objectives, including possible harvest. The department shall consider site-specific concerns and other legal criteria regarding the harvest of old growth. Interdisciplinary teams shall work to meet overall objectives to generate revenue for the trust, while also meeting biodiversity goals across the landscape, which shall entail project-level harvesting decisions.

(b) Designation of old growth set-asides, or networks,

may be made as long as the trust secures full market value pursuant to 77-5-116, MCA.

(c) When managing old growth the department shall apply restoration, maintenance, or removal treatments consistent with the range of natural disturbances.

(i) When utilizing old growth restoration treatments, the department shall retain sufficient large live trees to meet the department's old growth definition. Such treatments shall be applicable on sites that historically had non-lethal frequent fire regimes. The department shall target shade tolerant species for removal and overall stand density shall be reduced. The department shall treat stands with periodic re-entry, and prescribed under-burning when practicable, to maintain relatively low densities and dominance by shade-intolerant species. The department shall determine specific prescriptions at the project level.

(ii) When utilizing old growth maintenance treatments, the department shall retain sufficient large live trees to meet the department's old growth definition. The department shall apply such treatments on sites that historically had mixed severity fire regimes, either relatively frequent or infrequent. In some cases, the department may apply these treatments to stand replacement regimes when determined reasonable at the project level. The department shall target shade tolerant species for removal and reduce stand density. For residual stands, the department shall incorporate canopy gaps of sufficient size to encourage regeneration of shade-intolerant tree species. The department shall treat stands with periodic re-entry at less frequent intervals than for restoration. Densities and representation of shade-tolerant species will be higher than in restoration treatments. Fire shall be less frequently applied than in restoration treatments. The department shall determine specific prescriptions at the project level.

(iii) The department shall consider old growth removal treatments on sites that historically had stand replacement fire regimes. The department shall make selection of this treatment at the project level consistent with 77-5-116, MCA, after considerations for biodiversity, and forest health. Post treatment stands shall no longer qualify as old growth. The department shall determine specific prescriptions at the project level.

(d) The department shall maintain the option to apply old growth removal treatments, regardless of disturbance regime, when determined reasonable at the project level.

(e) The department shall maintain the option to not apply any treatment to old growth, regardless of disturbance regime, when determined reasonable at the project level, and when the decision would not conflict with 77-5-116, MCA.

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA
IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

NEW RULE XIX BIODIVERSITY - FIELD REVIEWS (1) The

department shall field review a subset of forest management activities after project completion, or every five years for ongoing projects, to evaluate the application of biological diversity measures at a stand and landscape level.

(2) The department shall check landscape evaluations to compare actual effects of management activities and natural processes against desired or predicted effects to the extent practicable.

(3) The department shall evaluate trends in:

- (a) forest cover characteristics;
- (b) habitat values;
- (c) insect and disease activity; and
- (d) other natural disturbances.

(4) The department shall complete biodiversity field reviews. The reviews shall focus on:

- (a) general landscape and stand level considerations;
- (b) implementation of the coarse filter;
- (c) emulations of natural processes and disturbance regimes in treatment selection;
- (d) threatened and endangered species; and
- (e) other such considerations.

(5) The department shall summarize biodiversity field reviews in a monitoring report to the state board of land commissioners every five years.

(6) The department shall quantify forest cover conditions, including cover types and age class distributions, annually at the unit level using data from the department's forest management bureau's stand level inventory system. Every five years the reports shall be submitted as part of the monitoring report to the state board of land commissioners.

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA
IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

NEW RULE XX SILVICULTURE (1) The department shall design all prescribed silvicultural treatments to maintain the long-term productivity of the site in order to ensure the long-term capability to produce trust revenue.

(2) The department shall evaluate ecological characteristics of the site and use the characteristics to develop stand management regimes that are compatible with the site.

(3) The department shall design management regimes to address:

- (a) stand structures and development;
- (b) species mixtures;
- (c) silvicultural systems; and
- (d) time periods for reforestation.

(4) Suitable management regimes shall be those that realize the productive capability of the site for producing desired products and benefits and minimize the risk of losses to biotic or abiotic agents (e.g., wind-throw, micro-climate changes).

(5) The department shall maintain and improve the long-

term quality of the genetic base in terms of growth, form, and adaptation of tree species.

(6) The department shall maintain diversity of species, ages, and structure within or between stands, in order to maintain a complex and stable ecosystem that would be buffered against losses to:

- (a) insects;
- (b) disease;
- (c) wildfire; and
- (d) climatic elements.

(7) The department shall prepare silvicultural prescriptions for all planned treatments. These prescriptions shall be written to accomplish the following objectives in a clear and organized manner that:

- (a) guides department personnel in the correct implementation of the prescribed treatments;
- (b) provides a record of the objectives and details of prescribed treatments for future reference; and
- (c) moves stands toward the selected desired future condition.

(i) The department will identify potential future treatments recognizing that conditions may change prior to implementation of those treatments.

(8) The department shall prescribe silvicultural treatments to meet other resource management rules and comply with all appropriate statutes and regulations. This requires coordination of treatments between stands in order to achieve parcel or landscape level goals for distribution of:

- (a) stand composition;
- (b) size;
- (c) stocking; and
- (d) structure characteristics.

(9) The department shall monitor the effectiveness of completed silvicultural treatments at meeting treatment objectives. Specific purposes of the silvicultural monitoring shall be to:

- (a) identify promptly the need for follow-up treatments in order to meet treatment objectives and environmental commitments;
- (b) provide information for improving the effectiveness of future silvicultural practices; and
- (c) identify potential improvements to the silviculture rules.

(10) In all stands where a regeneration cut has been applied, the department shall complete a regeneration survey promptly to ensure that treatment objectives and environmental commitments are met.

(11) In planted stands, the department shall complete a survival survey the first fall after planting.

(a) When regeneration is a goal, the department shall prescribe site preparation treatments to provide for adequate vegetation control including, but not limited to, the following:

- (i) herbicides;

- (ii) mechanical scarification; and
- (iii) broadcast burning.

(12) The department shall conduct stand evaluations prior to each scheduled entry and after each completed treatment.

(a) Evaluation methods and intensity shall be sufficient to provide information necessary for developing appropriate silvicultural prescriptions and for evaluating treatment results in terms of the prescribed objectives.

(13) The department shall maintain information on the dates and types of completed treatments and activities.

(14) The department shall maintain information on costs of intermediate silvicultural treatments including, but not limited to:

- (a) planting;
- (b) site preparation;
- (c) slash reduction; and
- (d) pre-commercial thinning.

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA
IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

NEW RULE XXI ROAD MANAGEMENT (1) The department shall plan transportation systems to minimize the number of road miles.

(a) The department shall only build roads that are necessary for current and near-term management objectives, as consistent with the other forest management rules.

(b) The department shall consider using alternative yarding systems that minimize new road construction.

(2) The department shall conduct transportation planning as part of project-level evaluations. The department shall also conduct an evaluation of existing and possible future transportation systems prior to road location and design. When planning transportation, the department shall consider:

(a) the relationship of access routes and road systems on adjacent sections, regardless of ownership. Managers shall plan systems cooperatively with adjacent landowners whenever practicable to minimize road construction.

(b) existing and probable future management needs of the tributary area, such as:

(i) coordination of department needs with adjacent ownership needs;

- (ii) public access;
- (iii) logging system capabilities;
- (iv) forest improvement activities;
- (v) fire protection; and
- (vi) wildlife habitat protection.

(c) value(s) of resources being accessed for the proposed project as well as resources to be accessed from future road construction, road use or extension of transportation system.

(3) When planning the location, design, construction, use, and maintenance of all roads, the department shall:

- (a) comply with BMP as necessary to avoid unacceptable

adverse impacts or as funding is available to implement improvements to existing roads;

(b) build roads to the minimum standard necessary to best meet current and future management needs and objectives;

(c) manage roads to minimize maintenance;

(d) relocate existing roads if reconstruction, maintenance and/or use of existing roads would produce greater undesirable impacts than new construction, where practicable and when funding is available; and

(e) use existing roads in SMZ only if potential water quality impacts can be adequately mitigated. The department shall primarily consider economic and watershed implications of relocating roads outside the SMZ.

(4) The department shall write contract specifications and administer construction projects to ensure roads are built as designed and to meet resource protection requirements.

(5) The department shall maintain roads commensurate with expected road use and appropriate resource protection.

(6) The department shall also maintain drainage structures and other resource protection measures on both restricted and open roads.

(7) The department shall include adequate maintenance requirements, proportional to road use, in all agreements for granting and acquiring rights-of-way, and the requirements shall be enforced during the administration of those agreements.

(8) The department shall plan road density to satisfy project level objectives and other forest management rules.

(9) The department shall determine which roads to close, abandon, or obliterate during project level analysis.

(10) The department shall consider possible closure to motorized vehicles those public access roads that are deemed:

(a) non-essential for public access;

(b) below a standard that would accommodate unrestricted access; or

(c) in which unrestricted access would cause excessive resource damage.

(i) In the Swan River state forest, the department shall plan road closures in accordance with the terms of the Swan Valley Grizzly Bear Conservation Agreement, dated February 23, 1995.

(11) The department shall consider for abandonment roads that are deemed non-essential. The department shall leave abandoned roads in a condition that provides adequate drainage and stabilization, while leaving intact the road prism and capital investment needed to construct that road.

(12) The department shall assess road maintenance needs by inspecting conditions on both open and closed roads. The department shall then prioritize maintenance operations considering the results of the inspections.

(13) The department shall inspect existing road systems during the planning and review of proposed timber sales and other projects. The inspections are intended to provide information used for:

- (a) road planning;
- (b) construction and maintenance; and
- (c) giving an opportunity for the correction of problem areas by incorporating corrective measures into planned projects.

(14) The department shall inspect road closure structures, such as gates and earth berms, as part of ongoing administrative duties and in response to notice of ineffective road closures received from the public. The department shall repair or modify ineffective closures or consider alternative methods of closure.

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA
IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

NEW RULE XXII WATERSHED MANAGEMENT (1) The department shall manage watersheds to maintain high quality water that meets or exceeds state water quality standards and protects designated beneficial water uses.

(2) The department shall incorporate BMP's into the project design and implementation of all forest management activities.

(a) BMP's appropriate for a given project or situation shall be determined during project development and environmental analysis.

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA
IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

NEW RULE XXIII WATERSHED MANAGEMENT - CUMULATIVE EFFECTS

(1) The department shall include an assessment of cumulative watershed effects on projects involving substantial vegetation removal or ground disturbance. Using the analysis, the department shall ensure that the project will not increase impacts beyond the physical limits imposed by the stream system for supporting its most restrictive beneficial use(s), when considered with other existing and proposed state activities for which the scoping process has been initiated. The analysis shall identify opportunities, if any exist, for mitigating adverse effects on beneficial water uses.

(a) The department shall determine the necessary level of cumulative watershed effects analysis on a project level basis. The level of analysis shall depend on the:

- (i) extent of the proposed activity;
- (ii) level of past activities; and
- (iii) beneficial uses at risk.

(b) The department shall complete a detailed watershed analysis when coarse filter or preliminary analysis predict or indicate either the existence of or the high risk potential for unacceptable cumulative watershed effects as a result of the proposal.

(c) The department shall establish acceptable levels of risk for cumulative watershed effects on a project level basis.

(i) The department shall determine acceptable levels of risk by taking into account such items as:

- (A) stream channel stability;
- (B) beneficial water uses; and
- (C) existing watershed conditions.

(ii) The department shall set acceptable risk at a level that ensures compliance with water quality standards and protection of beneficial water uses with a low to moderate degree of risk.

(d) The department shall set acceptable levels of risk for cumulative effects associated with projects proposed in the watershed of a water quality limited water body at a level that provides for protection of beneficial water uses with a low degree of risk.

(2) Whenever feasible, the department shall cooperate with other landowners in watersheds with mixed ownership to minimize cumulative watershed effects within acceptable levels of risk.

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA
IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

NEW RULE XXIV WATERSHED MANAGEMENT - MONITORING (1) The department shall develop and maintain a monitoring strategy to assess watershed impacts of land use activities and the effectiveness of mitigation measures. The monitoring strategy shall include:

(a) qualitative assessments, such as BMP audits, on most projects with a substantial amount of soil disturbance. For future applications, the department shall revise BMP's that fail to provide adequate protection;

(b) site-specific monitoring projects using quantitative assessment methods on selected sites to determine the effectiveness of BMP's and other commonly applied mitigation measures;

(c) assessments of habitat conditions on selected streams identified as supporting the fish species listed as threatened or endangered under the Endangered Species Act, 16 U.S.C Sections 1531 through 1544, and sensitive fish species; and

(d) evaluations of the effects of forest management activities on soils at selected sites.

(2) If watershed, soil, or fisheries monitoring indicate unacceptable impacts resulting from forest management activities, the department shall attempt to verify the problem, and correct or mitigate it to an acceptable level. When necessary, the department shall use the information collected to revise mitigation measures and/or modify future activities to avoid similar problems.

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA
IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

NEW RULE XXV WATERHSED MANAGEMENT - STREAMSIDE
MANAGEMENT ZONES

(1) The department shall extend the minimum width of the SMZ required under ARM 36.11.302 when forest management activities are proposed on sites with high erosion risk or on sites that are adjacent to fish bearing streams or lakes.

(2) The department shall determine the presence of high erosion risk from:

- (a) established soil surveys;
- (b) existing inventories; or
- (c) site-specific field evaluations.

(3) When the department proposes forest management activities on sites determined to have high erosion risk:

(a) the department shall extend the SMZ to a minimum of 100 feet when activities are located on slopes greater than 25% but less than 35%;

(b) the department shall extend the SMZ to a minimum of 150 feet when activities are located on slopes greater or equal to 35%, but less than 50%;

(c) the department shall extend the SMZ to a minimum of 200 feet when forest management activities are located on slopes greater or equal to 50%; and

(d) the department may modify and shorten SMZ widths, but in no case to a width less than 50 feet, extended for high erosion risk when topographic breaks, existing roads or other factors are present that reduce erosion risk and provide suitable sediment delivery filtration. No modified or shortened SMZ may be less than 50 feet in width.

(4) The following restrictions apply to forest management activities conducted within an SMZ extended for high erosion risk:

(a) The department shall limit new road construction within an extended SMZ to situations:

- (i) that either require a stream crossing;
- (ii) where potential impacts can be adequately mitigated; or
- (iii) alternative locations pose higher risk of resource impacts.

(b) The department shall restrict ground based equipment operations within the extended SMZ.

(i) The department shall not allow the operation of wheeled or tracked equipment within an extended SMZ when it is located on slopes greater than 35%.

(ii) The department shall not allow the operation of wheeled or tracked equipment within an extended SMZ when it is located on slopes less than 35%, unless the operation can be conducted without causing excessive compaction, displacement or erosion of the soil.

(iii) The department may allow the use of wheeled or tracked equipment inside of that portion of an extended SMZ, when operated from an established road on the side of the road away from the stream pursuant to ARM 36.11.304.

(c) The department shall restrict cable yarding of logs within and across an extended SMZ. Timber yarded by cable

systems shall not be yarded in a manner that causes excessive ground disturbance within the SMZ or extended SMZ.

(5) The department shall design harvest prescriptions conducted adjacent to fish bearing streams to retain adequate levels of shade and potential large woody debris recruitment to the stream channel by:

(a) extending the SMZ to a minimum slope distance equal to the site potential tree height of the proposed harvest stand at age 100 years;

(b) determining site potential tree height from site index curves developed for local or regional forest types; and

(c) determining site index of a stand by measuring tree height and age directly from suitable index trees located at the approximate minimum SMZ width.

(6) The department shall determine adequate levels of shade retention on a project level basis.

(a) Adequate levels are those levels that maintain natural water temperature ranges.

(7) The department shall determine adequate levels of large woody debris retention on a project level basis.

(a) Adequate levels are those levels that maintain stream channel form and function.

(8) The department shall retain all bank edge trees on timber harvests conducted adjacent to streams.

(9) When conducting timber harvests within the SMZ of a stream, lake, or other body of water supporting bull trout or any other fish or aquatic species listed under the Endangered Species Act, 16 U.S.C Sections 1531 through 1544, the department shall act pursuant to [NEW RULE VIII] and [NEW RULE IX].

(10) The department shall use existing roads in the SMZ only if potential water quality impacts are adequately mitigated and beneficial uses are fully protected.

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA
IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

NEW RULE XXVI WATERSHED MANAGEMENT - WETLAND MANAGEMENT ZONES

(1) The department shall establish a WMZ when forest management activities are proposed within or adjacent to an isolated wetland or adjacent to a wetland found within an SMZ.

(a) For isolated wetlands greater than 0.25 acre the WMZ boundary shall be 50 feet.

(b) For isolated wetlands smaller than 0.25 acre the WMZ boundary shall only include the wetland itself.

(c) For wetlands found within a SMZ, the WMZ boundary shall be 50 feet.

(2) The department shall meet all requirements of ARM 36.11.301 through 36.11.312 when conducting forest management activities within wetlands that are located within or intercepting an SMZ boundary.

(3) The criteria the department will use to identify wetlands are:

- (a) plant species composition;
- (b) soil characteristics; or
- (c) depth of water table.

(4) The presence of one or more field indicators for any of the three following criteria shall be adequate for wetland designation:

(a) The department shall consider a site to meet the wetland plant species composition criteria for wetland identification if, under normal circumstances, more than 50% of the dominant plant species from all strata occupying the site are classified as:

- (i) obligate wetland;
- (ii) facultative wetland; or
- (iii) facultative species.

(b) The department shall consider a site to meet the wetland hydrology criteria if the area is:

(i) inundated either permanently or periodically to a depth at which emergent vegetation interfaces with open water; or

(ii) the soil has a frequently occurring high water table that remains within 12 inches of the surface for more than 14 consecutive days during the growing season of the prevalent vegetation.

(c) The department shall consider a site to meet the criteria for wetland soils if the soils occupying the site are classified as hydric soils.

(5) The department shall avoid the use and construction of roads in a WMZ.

(a) The department shall use existing roads or construct roads in a WMZ only if potential water quality impacts are adequately mitigated and wetland functions are maintained.

(6) The department shall restrict harvest and equipment operations within a WMZ.

(a) The department shall limit harvest and equipment operations within a WMZ to low-impact harvest systems and operations that do not cause:

- (i) excessive compaction;
- (ii) displacement; or
- (iii) erosion of the soil.

(b) The department shall limit operation of ground-based equipment in a WMZ to periods of:

- (i) low soil moisture;
- (ii) frozen soil; or
- (iii) snow covered ground conditions.

(c) Where ground based skidding through an isolated wetland is necessary, the department shall minimize the number of skidding routes and the number of passes.

(d) The department shall restrict cable yarding of trees from within a WMZ to systems that fully suspend harvested logs; or partially suspend logs when conducted during periods of:

- (i) low soil moisture;
- (ii) frozen soil; or
- (iii) snow covered ground conditions.

(7) The department shall design harvest prescriptions in a WMZ to protect and retain shrubs and sub-merchantable trees.

(8) The department shall conduct an inventory and analysis of watershed impacts on state trust lands as funding allows.

(a) If conducted, the analysis shall be sufficient to identify causes of watershed degradation and set priorities for watershed restoration. The department shall emphasize mitigation of existing water quality impacts in order to provide greater opportunities to produce trust income while maintaining beneficial uses.

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA
IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

NEW RULE XXVII FISHERIES (1) The department shall minimize impacts to fish populations and habitat by implementing the watershed, SMZ, and WMZ rules contained in [NEW RULES XXII through XXVI].

(2) The department shall review forest management activities proposed adjacent to streams, lakes, or other bodies of water supporting bull trout or other fish and aquatic species listed as threatened or endangered under the Endangered Species Act, 16 U.S.C Sections 1531 through 1544, pursuant to [NEW RULES IV through XIX].

(a) The department shall make reasonable efforts, in its sole discretion, to cooperate in the implementation of conservation strategies developed by the state of Montana and United States fish and wildlife service (USFWS) for the restoration and recovery of bull trout and other listed fish species.

(i) The department shall manage bull trout habitat pursuant to The Restoration Plan for Bull Trout in the Clark Fork River Basin and Kootenai River Basin, Montana (June 2000).

(3) As designated by the department, pursuant to [NEW RULE XXXVI] the department shall:

(a) design forest management activities to protect and maintain:

- (i) westslope cutthroat trout;
- (ii) yellowstone cutthroat trout;
- (iii) arctic grayling; and
- (iv) all other sensitive fish and aquatic species.

(b) manage habitat supporting fish and aquatic species designated by the department as sensitive in a manner that complies with other rules concerning sensitive species.

(c) make reasonable efforts to cooperate in the implementation of state conservation strategies for the protection of:

- (i) westslope cutthroat trout;
- (ii) yellowstone cutthroat trout;
- (iii) arctic grayling; and

(iv) other fish species designated as sensitive by the department, as is practicable.

(4) When installing new stream crossing structures on fish-bearing streams, the department shall provide for fish passage as specified in 83-5-501, MCA, the Stream Protection Act (124 permits).

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA
IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

NEW RULE XXVIII THREATENED AND ENDANGERED SPECIES

(1) The department may participate in recovery efforts of threatened and endangered species to the extent it is consistent with trust law and other legal obligations, and may confer in its sole discretion with the United States fish and wildlife service (USFWS) to develop habitat mitigation measures.

(a) Measures may differ from federal management guidelines, as the department only possesses the legal obligation under the Endangered Species Act, 16 U.S.C Sections 1531 through 1544, to avoid the taking of a threatened or endangered species. The department shall work with the USFWS to amend such measures when, in the judgment of the forest management bureau chief, they are inconsistent with trust management obligations.

(b) Measures to support species recovery shall be periodically updated to implement new biological information and legal interpretations as warranted.

(2) The department may participate on interagency working groups established to develop guidelines and implement recovery plans for threatened and endangered species.

(a) If additional plant or animal species with habitat on state trust lands are federally listed as threatened or endangered, the department shall, in its sole discretion, participate in working groups for those species.

(b) The department may also participate in interagency groups formed to oversee management of recently de-listed species.

(3) The department staff shall report sightings of threatened and endangered species, except bald eagles, to respective working groups or an appropriate data repository.

(a) For bald eagles, only new nest locations shall be reported.

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA
IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

NEW RULE XXIX THREATENED AND ENDANGERED SPECIES - BALD EAGLE

(1) The department shall manage for bald eagles pursuant to the Montana Bald Eagle Management Plan (1994), and the Habitat Management Guide For Bald Eagles in Northwestern Montana (1991).

(a) To guide management, the department shall use site-specific plans where they have been developed previously, if they remain applicable.

(b) Maintenance of habitat for breeding bald eagles,

where no site-specific management plans are in place, shall include recognition and delineation of three management zones around each active bald eagle nest, including:

- (i) nest site area;
- (ii) primary use area; and
- (iii) home range.

(c) The department shall consider the following when conducting forest management activities within nest site areas:

(i) Mechanized activities are restricted between February 1 and August 15, unless the territory is documented as unoccupied during that breeding season, or if allowed as specified in a site-specific management plan. The department may grant exceptions for such activities as road repair, maintenance, and planting, if, following site review and documentation, activities are deemed to be:

- (A) of short duration;
- (B) outside of critical nesting periods; and
- (C) would present minimal risk to nesting adults or offspring.

(ii) The department shall not typically target bald eagle nest site areas for timber harvesting. Timber harvesting may be acceptable to perpetuate habitat characteristics preferred by bald eagles. The department shall design timber harvests to maintain the structural and ecological characteristics of the nest site area to include:

- (A) ample stocking;
- (B) large emergent trees;
- (C) snags;
- (D) a multi-storied canopy; and
- (E) vegetative screening from nearby human activity (low and high intensity).

(iii) The department shall protect such areas from firewood cutting and gathering, to the extent practicable.

(iv) Established levels of human activity (generally low intensity) may continue if the area has:

- (A) a recorded nest success of greater than 60%;
- (B) fledged at least three young during the previous five years; and
- (C) a low potential hazard rating according to the bald eagle nest survey.

(v) The department shall limit additional human activity, both low and high intensity, over which it has control between February 1 and August 15 (see the Montana Bald Eagle Management Plan of July 1994 for exceptions).

(vi) The department shall limit permanent development associated with forest management activities.

(vii) The department shall close existing roads and trails under its control to motorized use between February 1 and August 15, if:

- (A) vegetative screening from the nest is insufficient to prevent undue disturbance and human use is high; or
- (B) the eagles' behavioral response suggests it is necessary.

(d) The department shall include the following considerations when conducting forest management activities within bald eagle primary use areas:

(i) Limit mechanized activities between February 1 and August 15, unless the territory is documented as unoccupied during that breeding season, or if allowed as specified in a site-specific management plan. The department may grant exceptions for such activities as:

- (A) road repair;
- (B) maintenance; and
- (C) planting if following site review and documentation, activities are deemed to:
 - (I) be of short duration;
 - (II) be outside of critical nesting periods; and
 - (III) present minimal risk to nesting adults or offspring.

(ii) Design timber harvests to maintain structural and ecological characteristics particularly:

- (A) ample stocking;
- (B) large emergent trees;
- (C) multi-storied canopy, if present;
- (D) snags;
- (E) potential nest trees;
- (F) perch trees;
- (G) roost trees; and
- (H) vegetative screening from areas of human activity.

(iii) Timber harvesting shall be acceptable to perpetuate habitat characteristics preferred by bald eagles. The department may conduct salvage of wind-thrown, insect-damaged, or diseased trees as long as the general site characteristics of the area are maintained.

(iv) Low intensity human activity may occur, but high intensity human activity, over which the department has control, shall not occur between February 1 and August 15, unless otherwise allowed in a site-specific management plan.

(v) Minimize permanent development associated with forest management activities.

(vi) Minimize construction of new roads, trails, and open access routes.

(e) The department shall consider the following when conducting forest management activities within the bald eagle home range:

(i) Design timber harvests to protect, and/or enhance, key habitat components that already exist in close proximity to:

- (A) lakes;
- (B) rivers;
- (C) wetlands;
- (D) meadows; or
- (E) known flight paths, such as:
 - (I) large snags;
 - (II) large perch trees;
 - (III) emergent trees; and
 - (IV) roost trees.

(ii) Design projects involving human activities, both low and high intensity, to minimize disturbance to foraging and roosting eagles, and to avoid conflict in frequently used areas during the nesting season.

(iii) Minimize construction of new roads, trails, and open access routes.

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA
IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

NEW RULE XXX THREATENED AND ENDANGERED SPECIES - GRAY WOLF

(1) The department shall include the following management considerations for gray wolves:

(a) In areas with known wolf activity, evaluate the potential for active den sites prior to start up of mechanized activity of duration greater than five days.

(i) Temporarily suspend all mechanized activities and administrative uses, over which the department has control, in areas that are within a one-mile radius of any known, active wolf den until such time as wolves are known to have vacated the site or it has been determined that resumption of activities will not present conflicts with wolf use.

(b) Temporarily suspend operations if a suspected rendezvous site is observed within 0.5 mile of ongoing mechanized activities. Activities may resume if the department determines that resumption of activities will not present conflicts with wolf use.

(c) Design projects using the coarse filter approach pursuant to [NEW RULE IV] to promote maintenance and development of ecological features occurring naturally and historically that are important elements of the life-history requirements of:

- (i) white-tailed deer;
- (ii) mule deer; and/or
- (iii) elk.

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA
IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

NEW RULE XXXI THREATENED AND ENDANGERED SPECIES - GRIZZLY BEAR

(1) The department shall include the following management considerations for grizzly bears:

(a) Refer to the Swan Valley Grizzly Bear Conservation Agreement (February 23, 1995) for lands administered by the swan unit field office. Specific definitions that pertain to management within the Swan River state forest are contained in the agreement. In the event that cooperative implementation of the agreement ceases, the department shall proceed to the extent practicable under the terms of the agreement in the Swan River state forest.

(i) Participate in annual monitoring and reporting of implementation of the Swan Valley Grizzly Bear Conservation Agreement (February 23, 1995) for the duration the agreement is in effect, or until the department otherwise terminates the

agreement pursuant to applicable terms.

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA
IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

NEW RULE XXXII GRIZZLY BEAR MANAGEMENT ON BLOCKED LANDS

(1) Adhere to the following when conducting forest management activities on blocked Stillwater unit lands (Stillwater and Coal Creek state forests) within the Northern Continental Divide ecosystem:

(a) Use BMU and BMU sub-units for analysis purposes where applicable.

(b) Conduct road density estimates using standardized techniques accepted by the interagency grizzly bear committee, Northern Continental Divide ecosystem subcommittee, or other techniques approved by the forest management bureau chief.

(c) Design projects to result in no net increase in the proportion of each BMU sub-unit (trust lands only) that exceeds an open road density of one mile per square mile from baseline levels calculated in 1996.

(i) In the event a road is encountered that is not in the existing baseline, and evidence suggests the road existed prior to 1996, the road would be added to the 1996 baseline data and revised baseline levels would be calculated. This shall apply only during the non-denning period.

(ii) The department may allow temporary increases in road density above 1996 baseline levels for each BMU sub-unit upon approval by the forest management bureau chief. In such situations, the department shall consider alternative methods of minimization of impacts on grizzly bears to the maximum extent practicable.

(d) Design projects to result in no net decrease from baseline levels calculated in 1996 in the proportion of each BMU sub-unit (trust lands only) designated as security core. The department shall map security core areas. Security core areas shall remain intact for long periods of time, to the extent practicable.

(i) The department may allow temporary decreases in security core below 1996 baseline levels for each BMU sub-unit upon approval by the forest management bureau chief. In such situations, the department shall consider alternative methods to minimize the impacts on grizzly bears to the maximum extent practicable.

(e) For project-related activities that would occur within or immediately adjacent to security core areas, make efforts to conduct human activities during the denning period (November 16 to March 31). The department shall construct temporary roads and skid trails to prevent future use by motorized vehicles during the non-denning period after completion of project-related activities.

(f) When conducting project activities in or near identified security core areas during the non-denning period, minimize the duration of air and ground-based harvest activities to the extent practicable, particularly in known

areas of seasonal importance for bears.

(i) The department shall make efforts to design helicopter flight routes in a manner that avoids and/or minimizes flight time across security core areas and/or known seasonally secure areas.

(ii) Where practicable, the department shall design flight paths to occur greater than one mile from potentially affected core areas or areas of known seasonal importance.

(g) Where procedures are lacking and to the extent practicable, use published information, professional judgment, and available technology to locate and provide for secure areas of known seasonal importance for displaced bears where displacement risk is deemed high. Where feasible, the department may expand security core areas with additional buffers and/or temporary road restrictions to reduce temporary losses of effective security core area.

(h) Calculate total road density for analysis purposes and make efforts to reduce total road density to the extent practicable.

(i) Consider seasonal closures and activity restrictions for mitigating proposed actions.

(j) Monitor road closures annually for effectiveness and make necessary repairs within one operating season.

(k) Retain no less than 40% of any BMU sub-unit (trust lands only) in hiding cover. In situations beyond department control where disturbances may temporarily reduce hiding cover within a BMU sub-unit, the department shall make efforts to minimize further reductions of hiding cover.

(l) To provide additional security for grizzly bears, retain cover that provides visual screening adjacent to open roads, where practicable.

(m) Prohibit contractors and purchasers conducting contract operations from carrying firearms while operating.

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA
IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

NEW RULE XXXIII GRIZZLY BEAR MANAGEMENT ON OTHER WESTERN MONTANA LANDS

(1) When conducting forest management activities on scattered lands administered by the Stillwater unit, Kalispell unit, Missoula unit and Clearwater unit, within the Northern Continental Divide ecosystem, and in Plains and Libby unit lands within the Cabinet-Yaak ecosystem, adhere to the following:

(a) Design projects to result in no permanent net increase of open road density on parcels that exceed an open road density of one mile per square mile using simple linear calculations. This shall apply only during the non-denning period. Temporary increases are permissible for up to two consecutive operating seasons. The department shall make efforts to reduce total road density when compatible with other agency goals and objectives.

(b) Retain cover that provides visual screening adjacent to open roads to the extent practicable.

(c) Maintain hiding cover along all riparian zones to the extent practicable.

(d) Prohibit contractors and purchasers conducting contract operations from carrying firearms while operating.

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA
IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

NEW RULE XXXIV GRIZZLY BEAR MANAGEMENT ON EASTERN MONTANA LANDS

(1) On Bozeman unit lands within the greater Yellowstone ecosystem, and Helena unit and Conrad unit lands within the Northern Continental Divide ecosystem, determine appropriate methods to comply with the Endangered Species Act, 16 U.S.C Sections 1531 through 1544 and 77-5-116, MCA, on a project level basis.

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA
IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

NEW RULE XXXV THREATENED AND ENDANGERED SPECIES - CANADA LYNX

(1) The department administrative area offices where lynx rules apply to management activities include the department's northwest land office, southwest land office, central land office and northeast land office.

(2) Specific habitat elements recognized as important for lynx that occur within preferred lynx habitat types include:

- (a) denning;
- (b) mature foraging;
- (c) young foraging; and
- (d) temporary non-lynx habitat.

(3) The department shall generally manage for lynx habitat through the coarse filter approach, consistent with the emulation of natural processes, as described in [NEW RULE IV].

(a) When specifically assessing lynx habitat for stand identification, management, and retention the department may consider:

- (i) CWD abundance;
- (ii) proximity to foraging habitat;
- (iii) proximity to denning habitat;
- (iv) proximity to class one streams;
- (v) habitat connectivity; and
- (vi) firewood cutting risk.

(4) The department shall not salvage within stands identified as necessary to meet denning habitat requirements.

(5) In areas considered for pre-commercial thinning in lynx habitat, the department shall delay thinning in young foraging habitat stands with stem density greater than or equal to 4,000 per acre until the average crop tree height is greater than or equal to 15 feet or until lower limbs have evanesced up to approximately six feet high. Post-thinning, the department shall consider these stands other habitat for a minimum of 10 years post-treatment.

(6) The department shall:
(a) minimize construction of new roads;
(b) incorporate use of temporary roads; and
(c) obstruct or obliterate unnecessary existing roads in lynx habitat.

(7) When conducting forest management activities on blocked portions of the Stillwater, Swan River or Coal Creek state forests the department shall adhere to the following:

(a) The department shall identify and retain denning habitat on approximately 5% of the total lynx habitat acreage (sum of denning, mature foraging, young foraging, and temporary non-lynx habitat) within each applicable grizzly bear BMU sub-unit in patches greater than or equal to five acres (larger preferable).

(b) The department shall, on a BMU sub-unit basis, manage for 10% of the total lynx habitat acreage to be in a mixture of mature foraging and young foraging habitat.

(i) The department may salvage in mature foraging stands, provided that understory sapling densities are not reduced below the moderately-stocked condition, and CWD abundance is enhanced or not appreciably altered.

(8) When conducting forest management activities on all other department lands administered by the department's northwest land office, southwest land office, central land office and northeast land office, the department shall adhere to the following:

(a) The department shall maintain a minimum of five acres of denning habitat, where present, on parcels containing appreciable amounts of lynx habitat as determined at the project level.

(b) The department shall evaluate habitat suitability and retention of mature foraging habitat on parcels containing lynx habitat at the project level.

(i) On parcels containing appreciable amounts of lynx habitat in areas where broader landscape habitat conditions allow, the department shall retain approximately 10% of the lynx habitat acreage in mature or young foraging habitat.

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA
IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

NEW RULE XXXVI SENSITIVE SPECIES (1) Sensitive species usually have specific habitat requirements, and consideration of their needs is recognized as a useful fine filter for ensuring the department meets its primary goal to maintain diverse and healthy forests. Considering sensitive species in management actions ensures that the department is making decisions appropriate to the department's fundamental philosophy.

(a) However, if objective analyses suggest that the underlying ecological forces would produce a distribution of cover types different than those existing, it is appropriate to move toward the historic pattern. Sensitive species considerations for habitat management are not intended to

preclude a general move toward historic representation of cover types.

(2) The department shall manage to generally support populations of sensitive species on state trust lands to the extent consistent with emulation of natural processes and 77-5-116, MCA. The department shall accomplish this by managing for site characteristics generally recognized as important for ensuring their long-term persistence. The department may accept localized adverse impacts, but only within the context of an overall strategy that promotes biodiversity and supports habitat for these species.

(a) The department staff shall report notable observations of sensitive plant and animal species to the Montana natural heritage program.

(b) The department shall select and monitor projects with listed sensitive animal and plant species to assess implementation of mitigation measures and guide future management actions.

(3) For sensitive plant species, the department shall protect important sites and/or site characteristics with mitigation measures applied to management activities likely to have substantial long-term impacts. Prior to conducting planned land management activities, the department, at its sole discretion, shall refer to databases maintained by the Montana natural heritage program (MNHP), the United States forest service (USFS) and/or other appropriate sources for information on occurrence of plant species of special concern. Where information indicates potential for sensitive plant species and their habitat to occur within project areas, field surveys may be required to determine the presence, location, and mitigation measures for sensitive plant species.

(4) For sensitive animal species, the department shall provide habitat characteristics recognized as suitable for individuals to survive and reproduce in situations where land ownership patterns, underlying biological conditions, and geographical conditions suggest they are appropriate given natural disturbance regimes. Pursuant to 77-5-116, MCA, the department's contribution toward conservation of wide-ranging animal species that occur in low densities and require large areas to support self-sustaining populations would be supportive of, albeit subsidiary to, the principal role played by federal agencies with larger land holdings.

(5) For proposed projects, the department shall consider providing for habitat needs of sensitive animal species, primarily through managing for the range of historically occurring conditions appropriate to the sites. In blocked ownerships this shall include consideration of such issues as connectivity and corridors. In scattered ownerships, the department shall not necessarily commit to providing all the life-requisites of individual members of sensitive species, particularly if adjacent landowners managed in ways to limit the potential for individuals on state trust lands to be part of functional populations.

(6) The forest management bureau chief shall maintain a

list of sensitive animal and fish species specific to each administrative land office. The department shall develop and modify this list using information and classification systems developed by the USFS, USFWS, MNHP and, for fish species only, the FWP. The department shall use this list at the project level for identifying species appropriate to consider in project analyses at each administrative area office. The department shall base listing by land office on general geographic distribution and habitat affinities of animal species, and would not require site-specific evidence of presence on state trust lands. Additions or deletions from this list would require written justification by the forest management bureau chief.

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA
IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

NEW RULE XXXVII SENSITIVE SPECIES - FLAMMULATED OWL

(1) The department shall consider the following factors when harvesting timber where greater than 50 contiguous acres of flammulated owl preferred habitat types exist:

(a) Favor seral ponderosa pine on sites where historical fire regimes favor it.

(b) Favor older-aged ponderosa pine or, secondarily, Douglas-fir for retention or recruitment on warm, dry slopes.

(c) Retain and recruit large-sized snags pursuant to [NEW RULE IV].

(d) Open up dense stands on warm, dry slopes towards a basal area of 35 to 80 square feet.

(e) Promote non-uniform stands and retain occasional dense patches of conifer regeneration and shrubs.

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA
IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

NEW RULE XXXVIII SENSITIVE SPECIES - BLACK-BACKED WOODPECKER

(1) The department shall consider the following when developing prescriptions for harvest in areas of recently burned (less than five years) forest patches greater than 40 acres in size:

(a) The department shall minimize mechanized activity within 0.25 mile of black-backed woodpecker habitat during the period April 15 through July 1.

(b) The department shall manage approximately 10% of the burned acreage in an unharvested condition that is broadly representative of the entire burn (i.e., similar habitat types, fire intensity, elevations, stand density, and stand age class prior to burn) to be determined using site-specific information at the project level. The department shall manage such areas in relatively contiguous blocks favoring close proximity to unharvested fire-killed deferred stands on neighboring ownerships considering the habitat needs of black-backed woodpeckers.

(c) The department shall leave standing sub-merchantable

burned trees where soil, slope stabilization, and human safety concerns allow.

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA
IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

NEW RULE XXXIX SENSITIVE SPECIES - PILEATED WOODPECKER

(1) The department shall manage stands containing pileated woodpecker preferred habitat in larger, rather than smaller blocks, whenever practicable. Where large contiguous tracts of such stands are unavailable, the department shall consider management of smaller stands in close proximity to one another, or close to similar stands on adjacent ownerships.

(a) The department shall consider unsuitable areas of pileated woodpecker preferred habitat of less than 40 acres, unless they are close to other appropriate stands.

(b) Within pileated woodpecker preferred habitat, the department shall manage for snags, snag recruits, and CWD according to [NEW RULES XI, XIII, and XIV] particularly favoring retention of western larch, ponderosa pine and black cottonwood, considering amounts that would historically occur on similar sites. The department shall consider broken-top snags greater than 20 feet tall priority candidates for retention.

(c) Where appropriate, the department shall manage to encourage retention of black cottonwood, particularly where it can attain large size.

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA
IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

NEW RULE XL SENSITIVE SPECIES - FISHER (1)

The department shall assess fisher habitat on project analysis areas that contain preferred fisher cover types for lands administered by the department's northwest land office and southwest land office. When conducting forest management activities, the department shall consider the following as consistent with 77-5-301 and 77-5-302, MCA:

(a) In blocked areas within the Stillwater, Swan Creek, and Coal Creek state forests, the department shall use the grizzly bear BMU sub-unit as the unit of analysis. In all other areas, the department shall determine the unit of analysis at the project level.

(b) When managing within preferred fisher cover types that are within 100 feet of class 1 streams or within 50 feet of class 2 streams:

(i) The department shall manage 75% of the acreage (trust lands only) to be in the sawtimber size class in moderate to well-stocked density. The department shall postpone treatments where this cannot be accomplished.

(A) Where treatments reduce stand density below moderately stocked levels, the department shall make efforts to provide forest connectivity along the opposite stream bank.

(ii) The department shall define a minimum of one buffered management zone connecting to other fisher habitat through sites where individual perennial and intermittent stream courses are difficult to define (e.g., braided with many channels).

(iii) The department shall retain large snags, snag recruits and CWD pursuant to [NEW RULES IX through XIV]. The department shall promote recruitment if existing abundances are below expected levels. Following large-scale stand replacement disturbance events in preferred fisher cover types, the department shall give consideration to maintaining an abundance of large snags and CWD within 100 feet of class 1 streams and 50 feet of class 2 streams.

(iv) When practicable, the department shall avoid constructing new roads in preferred fisher cover types within 100 feet of class 1 streams or 50 feet of class 2 streams. Where feasible, the department shall incorporate use of temporary roads, and obstruct or obliterate unnecessary existing roads.

(c) The department shall manage for at least one forested patch providing connectivity between adjacent third order drainages, preferably in saddles, where landscape conditions allow.

(d) The department shall consider importance of late-successional riparian and upland forest in meeting the life requisites of fishers.

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA
IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

NEW RULE XLI SENSITIVE SPECIES - COMMON LOON

(1) The department shall manage for common loons in the following manner:

(a) For all lakes where common loon nesting pairs exist:

(i) limit construction of new permanent roads, structures, or permanent developments within a 500-foot radius of the nest site; and

(ii) limit mechanized activity within a 500-foot radius of the nest site between April 15 and July 15.

(b) For lakes which have been recently occupied but for which no currently nesting pair resides:

(i) survey lakeshores for nesting loons prior to developing plans for lakeshore development, road construction, or timber harvest that will occur within 500 feet of the lakeshore;

(ii) Prior to finalizing plans for any new roads, developments, timber sales, or intensive motorized activity that will occur on or near any lake potentially suitable for use by loons, design appropriate mitigation measures specific to the situation; and

(iii) If nesting is not documented, identify sites for proposed projects that would least likely be occupied by nesting loons in the future.

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA
IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

NEW RULE XLII SENSITIVE SPECIES - PEREGRINE FALCON

(1) The department shall manage for peregrine falcons within a 0.25 mile radius of a known nest site, and develop appropriate silvicultural mitigation measures for the particular situation.

(a) The department shall limit human activity, both low and high intensity, and mechanized activity typically within a 0.5 mile radius from known nest sites between March 1 and August 1.

(i) The department shall determine distances for activity restrictions on a site-specific basis for aerial operations.

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA
IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

NEW RULE XLIII BIG GAME

(1) The department shall promote a diversity of stand structures and landscape patterns through the coarse filter approach, and rely on the stand structures and landscape patterns to provide habitat for native wildlife populations, including big game, to the extent consistent with 77-5-116, MCA. Where state ownership contains forest conditions made rare on adjacent lands due to management activities of others, the department shall not necessarily maintain those conditions in amounts sufficient to compensate for their loss when assessed over the broader landscape, except as it coincides with other department objectives.

(a) The department shall implement measures to mitigate potential impacts if they are consistent with overall management objectives, and with department biodiversity rules.

(b) The department shall consult with the FWP on timber sale proposals that are likely to affect big game habitat. The department shall consider comments from the FWP when determining appropriate mitigation measures to limit detrimental impacts to big game.

(2) The department shall prohibit contractors and purchasers conducting contract operations from carrying firearms while operating.

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA
IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

NEW RULE XLIV GRAZING ON CLASSIFIED FOREST LANDS

(1) The department shall inspect grazing licenses issued on classified forest trust lands before the renewal date to determine:

- (a) range condition;
- (b) plant species composition;
- (c) riparian forage and browse utilization;
- (d) streambank disturbance;
- (e) presence of noxious weeds;

- (f) erosion; and
- (g) condition of improvements.
- (2) The department shall inspect grazing licenses mid-term between renewals to determine:
 - (a) range condition;
 - (b) riparian forage and browse utilization;
 - (c) streambank disturbance; and
 - (d) overall tract conditions with an emphasis on potential concerns or problems noted during the previous renewal inspection.
- (3) The department may specify grazing license stipulations any time during the term of the license.
- (4) The department shall specify the number of animal unit months and grazing period of use on grazing licenses for classified forest trust lands.
- (5) The department shall determine stocking rates for grazing licenses using visual assessment of existing vegetative plant species composition. The department shall compare estimated species composition by weight per range site to potential (climax range condition) for specific range sites.
- (6) The department shall require grazing management practices that are designed to minimize loss of riparian and streambank vegetation, and structural damage to stream banks that results in non-point source pollution for grazing licenses issued or renewed on forest classified lands.
- (7) The department shall manage each grazing license to:
 - (a) maintain or restore both herbaceous and woody riparian species in a healthy and vigorous condition;
 - (b) facilitate the ability of vegetation to reproduce and maintain different age classes in the desired riparian-wetland plant communities;
 - (c) leave sufficient vegetation biomass and plant residue, including woody debris, to provide for adequate sediment filtering and dissipation of stream energy for bank protection; and
 - (d) minimize the physical damage to stream banks to a level that maintains channel stability and morphological characteristics.
- (8) The department shall authorize continuous or season-long grazing only when healthy riparian conditions are maintained.
- (9) The department shall direct the grazing licensees to place mineral, protein, and other supplements in areas that minimize animal concentration near riparian areas.
- (10) The department shall direct grazing licensees to locate holding facilities outside of riparian areas.
- (11) The department shall evaluate existing riparian use for each license during renewal and midterm inspections and may specify acceptable riparian use and streambank impact levels through stipulations in the grazing license, if necessary to meet conditions described in (6).
- (12) The licensee, with technical assistance from the department, shall mitigate or rehabilitate riparian and stream

channel damage greater than the specified riparian use levels as determined pursuant to (11). If improved management does not resolve the damage, the department may make adjustments to the license to facilitate rehabilitation efforts.

(13) Licensees shall have primary responsibility for developing and maintaining rangeland improvements. The licensee shall also be responsible for maintaining or improving range sites by managing livestock grazing and utilization in a manner that would produce a stable or upward trend in range condition. The department may support rangeland improvements through technical and financial assistance, as workload and budget allow. Rangeland improvements include, but are not limited to, riparian management, weed control, water developments, grazing management systems, and fencing. The department and the licensee may cost-share improvements through an addendum to the license. The addendum stipulates terms and conditions by which the licensee may be required to reimburse the state for improvement expenses incurred.

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA
IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

NEW RULE XLV WEED MANAGEMENT (1) On classified forest lands the department shall use an integrated pest management approach for noxious weed management that includes prevention, education, cultural, biological, and chemical methods as appropriate.

(a) The department shall limit herbicide applications to areas where herbicides provide a cost-effective means of control.

(b) The department shall consider new outbreaks of noxious weeds and locations where native plant communities are threatened by noxious weed encroachment the first priority for control.

(c) The department shall submit general re-vegetation plans for land-disturbing projects to county weed boards as part of biennial agreements.

(d) The department shall promptly re-vegetate road rights-of-way and other disturbed areas with site-adapted species including native species, as available.

(2) The department shall manage forested state trust lands with the intent of controlling the spread of weeds.

(a) Practices to be utilized include, but are not limited to:

- (i) the use of weed-free equipment;
- (ii) prompt re-vegetation of roads;
- (iii) minimizing ground disturbance; and
- (iv) stipulations and control measures that limit the spread of weeds in timber sale contracts.

(3) A licensee of classified forest trust land shall be responsible for weed control at their expense pursuant to ARM 36.25.132.

(4) On sites where weeds were introduced by recreation

use, the department shall make available a portion of recreational access fees for weed control pursuant to ARM 36.25.159.

(5) All right-of-way agreements shall require the permittee to control weeds commensurate with the permitted use.

(a) This may include fees charged for weed control by the department or the weed district.

(6) In areas where weeds are widespread across state and adjacent ownerships, the department shall cooperate with weed districts on control projects.

(7) The department shall review implementation of noxious weed control and mitigation measures on cooperative projects and shall establish reasonable goals to address deficiencies as determined by the department at its sole discretion.

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA
IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

NEW RULE XLVI FINANCIAL AND ECONOMIC (1) The department shall manage forested state trust lands at different levels of intensity depending on biological productivity and economic potential. The department shall make investments according to trust law to maximize revenue over the long-term for the beneficiary, and to accomplish forest management objectives.

(a) The department shall retain flexibility in order to produce long-term stable income and pursue other income opportunities as guided by changing markets for new and traditional uses. Other site-specific income opportunities may occur on a minor amount of forest acreage. These uses may diverge from elements of [NEW RULE I through NEW RULE XLV], but would not compromise the overall fundamental premise of managing for biodiversity and forest health.

(2) The department shall review on an annual basis its financial and economic assumptions used in management decisions.

(3) The department shall prepare an annual revenue/cost summary for forest management programs.

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA
IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

NEW RULE XLVII CATEGORICAL EXCLUSIONS (1) Forest management activities that are classified as categorical exclusion shall not require an environmental assessment or environmental impact statement.

(a) Categorical exclusions include activities on state trust lands conducted by others under the authority of the department as well as activities conducted by the department itself.

(2) Categorical exclusions shall not apply in the following extraordinary circumstances:

(a) sites with high erosion risk;

(b) federally listed threatened and endangered species or critical habitat for threatened and endangered species as designated by the USFWS;

(c) within municipal watersheds;

(d) activities within the SMZ of fish bearing streams or lakes, except for modification or replacement of bridges, culverts and other crossing structures;

(e) state natural area;

(f) Native American religious and cultural sites;

(g) archaeological sites;

(h) historic properties and areas;

(i) several related projects that individually may be subject to categorical exclusion but that may occur at the same time or in the same geographic area. Such related actions may be subject to environmental review even if they are not individually subject to review; or

(j) violations of any applicable state or federal laws or regulations.

(3) Pursuant to ARM 36.2.523, the department adopts the following additional categorical exclusions for forest management activities conducted on state trust lands:

(a) Minor temporary uses of land involving negligible or no disturbance of soil or vegetation and having no long-term effect on the environment.

(b) Plans or modifications of plans adopted or approved by the department that would not essentially pre-determine future individual department actions affecting the physical or biological environment.

(c) The issuance, renewal, or assignment of a lease or license on land when the uses of the land authorized under the lease or license will remain essentially the same.

(d) Acquisition of fee title, easements, rights-of-way, or other interests in land that do not tend to commit the department to other actions.

(e) Maintenance and repair of existing roads.

(f) Reconstruction or modification of an existing bridge on essentially the same alignment, or replacement of a culvert, including temporary diversion or channelization of the stream, if done in accordance with all applicable state and federal laws and regulations and with BMP's to minimize sedimentation.

(g) Crossings of class 3 stream segments by means of culvert, bridge, ford, or other means, in accordance with BMP's and pursuant to ARM 36.11.304.

(h) Issuing permits for temporary use of existing roads.

(i) The closure of existing roads including installation of gates, berms, debris, or other facilities necessary to close existing roads to motorized public use.

(j) Removal of materials that have been stockpiled from previous excavation.

(k) Back filling of earth into previously excavated land with material compatible with the natural features of the site.

(l) Gathering small quantities of forest products for

personal use, such as:

- (i) firewood;
- (ii) Christmas trees; or
- (iii) posts.
- (m) Regeneration of an area to native tree species, through planting or other means, including site preparation that does not involve the use of herbicides or result in conversion of the vegetation type.
- (n) Seed procurement, growing, lifting, and distributing nursery stock, and associated non-chemical disease and pest control.
- (o) Drilling of water wells for domestic use and for irrigation of lawns and gardens for existing cabin sites or home sites.
- (p) Herbicide or pesticide treatments, done in accordance with registered label instructions and uses, for control of pests or nuisance vegetation, using spot applications on less than 160 acres within a 640 acre section, during a calendar year.
- (q) The handling of hazardous materials for fire suppression or other purposes (e.g., fuel for a helicopter seeding project) when done according to specifications of the United States department of transportation, state and federal regulations, and label specifications.
- (r) Fence construction, which may include cutting minor amounts of live timber not in excess of 5,000 board feet, if the fence is no more than 42 inches high and the bottom wire is at least 16 inches from the ground.
- (s) Installation of water pipelines to improve livestock distribution or otherwise benefit grazing allotments.
- (t) Mechanical removal of trees less than two feet tall that are encroaching on range or non-commercial forest lands, on up to 60 contiguous acres, not to exceed a total of 160 acres within a 640 acre section, during a calendar year.
- (u) Removal of hazardous trees from around structures, recreation areas, and roads, not to exceed 5,000 board feet.
- (v) Activities associated with cone collection to provide seed for reforestation.
- (w) Timber harvests of up to 250 Mbf, or salvage harvests of up to 1,000 Mbf.

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA
IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

NEW RULE XLVIII MANAGEMENT OF THE STATE FOREST LAND MANAGEMENT PLAN

(1) Beginning in the year 2005 and every five years thereafter, the forest management bureau chief shall make a written report to the director of the department and the trust land management division administrator on the current status of state forest land management plan implementation and effectiveness, including a recommendation on the need for significant changes to the plan.

(2) Upon review, the department shall consider changing the plan for one or more of the following reasons:

(a) new legislation passes that is not compatible with the selected alternative;

(b) the state board of land commissioners provides new direction; or

(c) the forest management bureau chief judges that the original assumptions supporting the plan no longer apply.

(3) The department may make minor changes or additions to the plan without a programmatic review of the entire plan as long as those changes are compatible with the overall plan, as determined at the sole discretion of the department.

(4) Changes that result in a departure from the fundamental intent of the plan as determined by the department shall require an environmental review of affected portions of the plan.

(5) The department shall monitor individual resources pursuant to [NEW RULE IV through NEW RULE XLV].

(a) The department shall compile the results of monitoring into a report for the state board of land commissioners by October 2005 and every five years thereafter.

(b) The department shall include monitoring mechanisms for applicable elements of [NEW RULE IV through NEW RULE XLV] and project environmental analyses in forest management activity contracts.

(c) Contract administrators shall monitor compliance with all requirements specified in contracts for forest management activities. If contract requirements are not being met, the contractor shall correct them, under department supervision.

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA
IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

NEW RULE XLIX SITE-SPECIFIC ALTERNATIVE PRACTICES

(1) The department shall comply with [NEW RULE I through NEW RULE XLV] when conducting forest management activities, unless approval has been obtained from the forest management bureau chief for alternative forest management practices. Alternative practices may be designed in response to site-specific conditions encountered while planning forest management activities.

(2) The forest management bureau chief may approve proposed alternative practices only if such practices would be otherwise lawful, and it is determined with reasonable certainty that the proposed alternative practices would provide adequate levels of resource protection.

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA
IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

NEW RULE L TIMBER PERMITS (1) The department shall have the authority to issue commercial timber permits that do not exceed 100,000 board feet of timber, or, in cases of emergency salvage, not to exceed 200,000 board feet of timber pursuant to 77-5-212, MCA.

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA
IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

REASON: NEW RULES I through L are being proposed as statements and procedures to guide the management of forest lands which are administered and controlled by the department. NEW RULES XLIV and XLV only apply to classified forest lands. The new rules implement requirements within Title 77 of the Montana Code Annotated, and largely adopt several provisions of the informal Implementation Guidance of the State Forest Land Management Plan previously issued by the department.

The department has not taken the exact terms of the Implementation Guidance and converted it into rules format to comply with MAPA. The new rules deviate from the Implementation Guidance to reflect changes in policy, and Montana statutes and case law since the State Forest Land Management Plan was adopted.

New rule L is being proposed to authorize the Department of Natural Resources and Conservation to issue timber permits without presenting such permits for formal approval at meetings of the State Board of Land Commissioners.

4. Concerned persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Pete Van Sickle, Forest Management Bureau Chief, Department of Natural Resources and Conservation, 2705 Spurgin Road, Missoula, MT 59804; telephone (406) 542-4306; FAX (406) 542-4217; or e-mailed to pvensickle@state.mt.us, and must be received no later than 5:00 p.m. on November 25, 2002.

5. Mike O'Herron, Department of Natural Resources and Conservation, 2705 Spurgin Road, Missoula, MT 59804-3199 has been designated to preside over and conduct the hearing.

6. An electronic copy of this Notice of Proposed Adoption is available through the department's site on the World Wide Web at <http://www.dnrc.state.mt.us>. The department strives to make the electronic copy of this Notice of Proposed Adoption conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the e-mail address does not excuse late submission of comments.

7. The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specify that the person wishes to receive notices regarding conservation districts and resource development, forestry, oil and gas conservation, trust land management, water resources or combination thereof. Such written request may be mailed or delivered to Emily Cooper, Department of Natural Resources and Conservation, P.O. Box 201601, 1625 11th Avenue, Helena, MT 59620-1601, faxed to the office at (406) 444-2684, or may be made by completing a request form at any rules hearing held by the agency.

8. The bill sponsor notice requirements of 2-4-302, MCA do not apply.

BOARD OF LAND COMMISSIONERS

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

By: /s/ Judy Martz
JUDY MARTZ
Chair

By: /s/ Donald D. MacIntyre
DONALD D. MACINTYRE
Rule Reviewer

Certified to the Secretary of State September 16, 2002.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the)
amendment of ARM 37.80.201)
pertaining to early childhood)
services bureau child care)
subsidy program)

NOTICE OF PUBLIC HEARING
ON PROPOSED AMENDMENT

TO: All Interested Persons

1. On October 16, 2002, at 1:30 p.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed amendment of the above-stated rule.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on October 8, 2002, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

2. The rule as proposed to be amended provides as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.80.201 NON-FINANCIAL REQUIREMENTS FOR ELIGIBILITY AND PRIORITY FOR ASSISTANCE (1) through (5) remain the same.

(6) Due to limited funding for child care assistance, some households which meet all requirement for eligibility may not receive benefits. If there are insufficient funds to provide benefits to all eligible households, priority for benefits will be determined as follows:

(a) and (b) remain the same.

(c) all other eligible non-TANF households shall be prioritized ~~in the following manner:~~ by ranking household income as a percentage of the federal poverty guidelines (FPG). The household with the lowest percentage of income, relative to FPG, has the highest priority when funding becomes available;

~~(i) single-parent and two-parent households, who meet minimum hourly work requirement provided in ARM 37.80.201 have first priority;~~

~~(ii) teen parents attending high school or equivalency programs have second priority; and~~

~~(iii) households experiencing short-term medical emergencies who need the child care so they may return to work have last priority.~~

~~(d) if there are two or more non-TANF households at the same level of priority as set forth in (6)(c)(i) through (iii), the household whose income is a lower percentage of the federal poverty guidelines has a higher priority;~~

(e) ~~(d)~~ if there are two or more non-TANF households at the same level of priority as set forth in (6)~~(d)~~ (c), the household whose application was received first has a higher priority.

(7) through (10) remain the same.

AUTH: Sec. 40-4-234, 52-2-704 and 53-4-212, MCA
IMP: Sec. 52-2-704, 52-2-713, 52-2-721, 52-2-722,
52-2-723, 52-2-731, 53-2-201, 53-4-211, 53-4-601 and
53-4-611, MCA

3. The Early Childhood Services Bureau manages the Child Care and Development Fund, a child care subsidy program that supports non-TANF low income working families and non-TANF teen parents attending high school. Additionally, the program supports TANF families and families using child protective services. In April 2002, 5,990 children in 4,153 families were served in the child care subsidy program. In recent years, the program has experienced a 3% annual growth rate. A waiting list for eligible non-TANF families has been implemented because budget estimates suggest the child care program has reached current capacity.

Eligible non-TANF families are prioritized for selection from the waiting list. Families are ranked according to income, relative to family size and the federal poverty guidelines. Families with the lowest income are the first to be selected from the waiting list.

Non-TANF families include:

- 1) low income working families;
- 2) teen parents attending high school; and
- 3) low income working families experiencing a medical emergency. The current rules list these categories in a specific order, incorrectly suggesting low income working families have categorical priority over teen parents attending high school. This rule change is necessary to clarify that all eligible non-TANF families are ranked by income on the waiting list. The policy provides some assurance that teen parents attending high school, who have little or no income, will receive priority for child care subsidies.

The Department considered leaving the rule in its current form. However, that course of action would conflict with current policy and leave the Department open to challenges from low income working families waiting for services.

There is no fiscal impact resulting from this rule change. This proposed amendment is expected to impact approximately 4,153 families.

4. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Kathy Munson, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than 5:00 p.m. on October 24, 2002. Data, views or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

5. The Office of Legal Affairs, Department of Public Health and Human Services has been designated to preside over and conduct the hearing.

Dawn Sliva
Rule Reviewer

/s/ Gail Gray
Director, Public Health and
Human Services

Certified to the Secretary of State September 10, 2002.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the)
amendment of ARM 37.110.101)
pertaining to food standards)
)
) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Interested Persons

1. On October 26, 2002, the Department of Public Health and Human Services proposes to amend the above-stated rule.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you need to request an accommodation, contact the department no later than 5:00 p.m. on October 8, 2002, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

2. The rule as proposed to be amended provides as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.110.101 FOOD STANDARDS (1) The department adopts by reference the following federal regulations establishing food definitions and standards promulgated by the United States food and drug administration which are found in the corresponding parts of Title 21 of the Code of Federal Regulations (CFR) as of ~~April 1, 1993~~ April 1, 2001:

(a) through (g) remain the same.

(h) Dissemination of information on unapproved/new uses for marketed drugs, biologics and devices 21 CFR 99

(h) through (j) remain the same but are renumbered (i) through (k).

~~(k) Quality standards for foods with no identity standards~~ 21 CFR 103

(l) and (m) remain the same.

(n) Infant formula quality control procedures 21 CFR 106

(o) Infant formula 21 CFR 107

(p) Emergency permit control 21 CFR 108

(n) and (o) remain the same but are renumbered (q) and (r).

(s) Current good manufacturing practice for dietary supplements 21 CFR 111

(p) and (q) remain the same but are renumbered (t) and (u).

(v) Shell eggs 21 CFR 115

(w) Hazard analysis and critical control point (HACCP) systems 21 CFR 120

- (x) Fish and fishery products 21 CFR 123
(r) through (aj) remain the same but are renumbered (y) through (aq).
- (ar) Beverages 21 CFR 165
(ak) through (bc) remain the same but are renumbered (as) through (bk).
- (bl) Dietary supplements 21 CFR 190
(2) remains the same.

AUTH: Sec. 50-31-104, 50-31-108 and 50-31-201, MCA
IMP: Sec. 50-31-101, 50-31-104 and 50-31-203, MCA

3. The proposed amendment to ARM 37.110.101 updates the legal citations of Title 21 of the Code of Federal Regulations (CFR), 2001 edition. The Department's last update of the CFR citations to the rule was done in 1994 by using the 1993 edition of the CFR. Since then, the U.S. Food and Drug Administration has revised parts of the Title 21 CFR by adding new provisions and repealing others to reflect current manufacturing practice and food safety measures.

The CFR citations listed in this rule encompass every provision found in Title 21 CFR (2001). The Department did not eliminate any provision.

The amendment to ARM 37.110.101 is needed so that current federal regulations are used in this state. Food manufacturing firms within Montana ship their products to other states through interstate commerce, and they must comply with all federal regulations. The Department proposes to adopt Title 21 CFR sections 70 through 190 (2001) to require those manufacturers to comply with the same regulations as other interstate firms.

The option of not updating the federal regulations cited in ARM 37.110.101 is to leave the current 1993 CFR citations. Keeping the 1993 regulations would be doing a disservice to the state's food manufacturing industry. Using outdated federal regulations may lead to interstate complaints or recalls in connections with food products shipped outside of Montana.

4. Interested persons may submit their data, views or arguments concerning the proposed action in writing to Kathy Munson, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than 5:00 p.m. on October 24, 2002. Data, views or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

5. If a person who is directly affected by the proposed action wishes to express data, views and arguments orally or in writing at a public hearing, that person must make a written request for a public hearing and submit such request, along with any written comments to Kathy Munson, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@state.mt.us no later than 5:00 p.m. on October 24, 2002.

6. If the Department of Public Health and Human Services receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of those who are directly affected by the proposed action, from the appropriate administrative rule review committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who are directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be over 25 based on the wholesale food manufacturers and retailers affected by rules covering food standards.

Dawn Sliva
Rule Reviewer

/s/ Gail Gray
Director, Public Health and
Human Services

Certified to the Secretary of State September 16, 2002.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the)
amendment of ARM 37.85.204)
pertaining to medicaid cost)
sharing)

NOTICE OF PUBLIC HEARING
ON PROPOSED AMENDMENT

TO: All Interested Persons

1. On October 16, 2002, at 2:30 p.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed amendment of the above-stated rule.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on October 8, 2002, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

2. The rule as proposed to be amended provides as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.85.204 RECIPIENT REQUIREMENTS, COST SHARING

(1) Except as provided in ~~(3)~~ (4) through ~~(5)~~ (6) each recipient must pay to the provider a copayment of ~~\$200~~ \$100 per discharge for inpatient hospital services, not to exceed the cost of the services.

(2) Except as provided in (4) through (6) each recipient must pay to the provider a cost sharing payment for outpatient drugs not to exceed the cost of the service. The rate of cost sharing payment is a minimum of \$1 per prescription up to a maximum of \$5 per prescription based on 5% of the medicaid allowed amount. The maximum total cost sharing payment per recipient for outpatient drugs shall not exceed \$25 per month.

~~(2)~~ (3) Except as provided in ~~(3)~~ (4) through ~~(5)~~ (6) each recipient must pay to the provider coinsurance a cost sharing payment not to exceed the cost of the service. For the following service providers, the rate of ~~coinsurance~~ cost sharing is a minimum of \$1 per visit up to a maximum of the lesser of \$5 per visit or 5% of the average medicaid allowed amount for that provider type, rounded to the nearest dollar:

- (a) outpatient hospital services;
- (b) podiatry services;
- (c) physical therapy services;

- (d) speech therapy services;
 - (e) audiology services;
 - (f) hearing aid services;
 - (g) occupational therapy services;
 - (h) home health services;
 - (i) ambulatory surgical center services;
 - (j) public health clinic services;
 - (k) dental services;
 - (l) denturist services;
 - ~~(m) outpatient drugs, minimum coinsurance payment \$1 per prescription;~~
 - ~~(n) (m) durable medical equipment, orthotics, prosthetics, and medical supplies;~~
 - ~~(o) (n) optometric and optician services;~~
 - ~~(p) (o) physician services;~~
 - ~~(q) (p) mid-level practitioner services;~~
 - ~~(r) (q) federally qualified health center services;~~
 - ~~(s) (r) rural health clinic services;~~
 - ~~(t) (s) freestanding dialysis clinic services;~~
 - ~~(u) services to qualified medicare beneficiaries including chiropractic services;~~
 - ~~(v) (t) licensed psychiatrist services;~~
 - ~~(w) (u) licensed psychologist services;~~
 - ~~(x) (v) licensed clinical social worker services;~~
 - ~~(y) (w) licensed professional counselor services;~~
 - ~~(z) adult day treatment services provided by a mental health center under ARM 37.88.901 and 37.88.905 through 37.88.907;~~
 - ~~(aa) community based psychiatric rehabilitation and support services provided by a mental health center under ARM 37.88.901 and 37.88.905 through 37.88.907;~~
 - ~~(ab) (x) independent diagnostic testing facility services;~~
- and
- ~~(ae) (y) home infusion therapy services.~~
- ~~(3) (4) For purposes of this rule, "medicaid allowed amount" means the amount allowed in accordance with the reimbursement methodology for the particular service, before third party, liability, incurment, and other such payments are applied.~~
- ~~(4) (5) The following individuals are exempt from cost sharing:~~
- ~~(a) individuals under 18 (21) years of age; and~~
 - ~~(b) pregnant women; and~~
 - ~~(c) institutionalized individuals for services furnished to any individual who is an inpatient in a hospital, skilled nursing facility, intermediate care facility or other medical institution if such individual is required to spend for the cost of care all but their personal needs allowance, as defined in ARM 37.82.1320.~~
- ~~(5) (6) Cost sharing may not be charged for services provided for the following purposes:~~
- ~~(a) emergencies;~~
 - ~~(b) family planning;~~
 - ~~(c) hospice;~~

- (d) personal assistance services;
- (e) home dialysis attendant services;
- (f) home and community based waiver services;
- (g) non-emergency medical transportation services;
- (h) eyeglasses purchased by the medicaid program under a volume purchasing arrangement;
- (i) early and periodic screening, diagnostic and treatment (EPSDT) services; and
- (j) independent laboratory and x-ray services-;
- (k) services for medicare crossover claims where medicaid is the secondary payor under ARM 37.85.406(18). If a service is not covered by medicare but is covered by medicaid, cost sharing will be applied; and
- (l) services for third party liability (TPL) claims where medicaid is the secondary payor under ARM 37.85.407. If a service is not covered by TPL but is covered by medicaid, cost sharing will be applied.
- ~~(6) The total cost sharing for each medicaid recipient shall not exceed \$500 per state fiscal year. The existing \$200 cap is replaced by the \$500 cap on March 1, 2002.~~

AUTH: Sec. 53-2-201 and 53-6-113, MCA

IMP: Sec. 53-6-101, 53-6-113 and 53-6-141, MCA

3. On August 1, 2002, the Department of Public Health and Human Services filed a notice of the emergency amendment of ARM 37.85.204 pertaining to Medicaid cost sharing. Pursuant to 2-4-303(1), MCA, the emergency rule cannot be effective for more than 120 days. Therefore, the Department is now proposing to make permanent the changes to ARM 37.85.204 adopted in the emergency rule. Additionally, the Department proposes to make several minor changes to ARM 37.85.204 which are merely technical in nature and will not affect the cost sharing amount payable by Medicaid recipients.

Effective April 1, 2002, the Department amended ARM 37.85.204 to change the cost sharing requirements for Medicaid recipients by increasing the cost sharing amounts charged to each recipient of Medicaid inpatient hospital services from \$100 to \$200 per discharge; setting cost sharing charges for certain other Medicaid services at 5% of the Medicaid allowed amount and setting a minimum cost sharing charge for outpatient drugs at \$1 for each prescription. The April 1, 2002, amendments also increased the cost sharing cap for each Medicaid recipient from \$200 to \$500 for each state fiscal year, July 1 through June 30. Finally, the age of individuals exempted from cost sharing was decreased from under 21 to under 18 years of age.

The Department received comments and correspondence from providers and recipients of Medicaid services criticizing the changes to ARM 37.85.204 implemented April 1, 2002. State legislators contacted the Department to express their concerns about the effects of the April 1, 2002, changes on the health, safety and welfare of their constituents. The Department has

determined that the cost sharing methodology in effect before the adoption of the emergency rule has created severe problems for health care providers and Medicaid recipients. The changes made in the emergency rule, which now will be permanent, are intended to alleviate these problems.

Health care providers objected to the 5% cost sharing charge because it is extremely difficult to administer and collect. It required the providers to calculate the charge based upon a Department fee schedule of allowed charges. The Department intended the cost sharing charges to be similar to coinsurance methodologies used by private health care insurers, in that providers would bill and collect the cost sharing amounts. It was impractical for providers to bill Medicaid recipients for the cost sharing charges because the amounts were not sufficient to warrant preparation of a statement. Health care providers preferred to collect cost sharing charges at the time of service, due to the financial and economic situation of the Medicaid population. They stated they were more likely to collect the cost sharing charge at the time of service than if they billed for the recipient's obligation.

Health care providers also complained that the cost sharing requirement made them look petty when trying to collect the amount owing, especially when cost sharing amounts were less than \$1. Most health care providers did not have change on hand and could not make change for a recipient like a retail business would. Therefore, most providers did not bother collecting the cost sharing obligation.

Some services under the cost sharing policy resulted in an unduly large obligation for the Medicaid recipient. Due to the high cost of health care, some services could have resulted in cost sharing obligations of well over \$50 per visit. Providers argued that a Medicaid recipient would be unable to pay such large obligations, especially when the recipient is receiving services frequently. Therefore, the providers argued, the policy represented a hidden shift of costs to the health care provider and in effect reduces their payment for the service. Many health care providers indicated they are considering withdrawing their participation from the Medicaid program because they cannot afford to provide services below cost.

Some pharmacy services also resulted in cost sharing charges which some considered to be excessive and it was alleged that, as a result, some recipients did not receive prescriptions needed to treat their conditions. The Department estimated that 10% of prescriptions would result in cost sharing charge obligations greater than \$5. While this was true, some very expensive prescriptions resulted in cost sharing obligations of \$100 or more per prescription, placing an undue burden on Medicaid recipients. Therefore, Medicaid recipients used other resources to pay their cost sharing obligations and in some instances, costs shifted to other department programs that paid

the 5% cost sharing charge. In other instances, recipients did not obtain their prescriptions. This aggravated their conditions. Consequently, recipients sought other high cost services such as hospital emergency rooms and the State Hospital.

Medicare crossover claims typically represent 20% or less of the amount allowed by Medicare. Under the previous methodology in which the cost sharing obligation was calculated at 5% of the Medicaid allowed amount, crossover claim cost sharing obligations were frequently less than \$1. The small amount of the crossover claim cost sharing obligations made it difficult or impossible for health care providers to calculate them at the time of service.

42 CFR 447.20 prohibits the Department from imposing cost sharing obligations on recipients with third party coverage that would result in payments equal to or greater than the amount payable under the state plan. Again, it was administratively difficult or impossible for providers to calculate the cost sharing charge for a recipient with third party insurance.

When the Department decreased the age of individuals exempted from cost sharing charges to 18, the eligibility limit for EPSDT remained at 20. The different ages for cost sharing and EPSDT services created an unnecessary conflict that resulted in individuals between 18 and 20 arguing that they should be exempt from cost sharing based on the provisions of the rule exempting EPSDT services from cost sharing. While the Department intended the exemption apply only to nutrition, respiratory therapy, school based services and chiropractic services, recipients sought to apply it to all services for the age group. The increased difficulty of operating and administering Medicaid programs and explaining the policy resulted in the Department authorizing cost sharing overrides for persons between the ages of 18 through 20. Therefore, the Department is realigning the age limits by restoring the cost sharing age limit to under 21.

The Department found that excessive cost sharing charges prior to the emergency rule caused some Medicaid recipients to avoid or delay treatment of medical conditions. This may have led to an aggravation of some medical conditions. Utilization of more intensive high-cost services will increase expenditures, further adding to the need to cut Medicaid services. Overburdened providers may withdraw their participation in the Medicaid program. This would lead to shortages of some services and will make medical services inaccessible in some rural areas of the state of Montana. This will further contribute to a public health crisis.

The Department's experience with an annual cap on cost sharing charges indicated that few Medicaid recipients met the \$200 cap. The Department believes that the \$100 cost sharing for inpatient hospital discharges, the \$25 monthly cap on outpatient drugs and

the \$5 cap on cost sharing charges for each service or prescription adopted in this rule will make an annual cap unnecessary.

Therefore, the Department is permanently adopting the following changes to ARM 37.85.204 which were contained in the emergency rule:

(1) a maximum cap of \$5 per prescription is added for Medicaid outpatient drugs with a \$25 monthly cap on outpatient drug cost sharing amounts per recipient;

(2) a minimum cost sharing amount on other outpatient Medicaid services is set at \$1 and a maximum cap of the lesser of \$5 per service or an amount equal to 5% of the average per visit Medicaid allowed amount for each provider type rounded to the nearest dollar is added;

(3) the cost sharing charge for inpatient hospital services is reduced to \$100 per discharge;

(4) the age limit for individuals exempt from cost sharing charges is restored to under 21 years of age;

(5) services covered by Medicare for crossover claims are exempted from cost sharing when Medicaid is the secondary payor;

(6) services covered by third parties are exempted from cost sharing when Medicaid is the secondary payor;

(7) the annual limitation on cost sharing by a Medicaid recipient is removed; and

(8) the department corrected a clerical mistake in the list of services subject to cost sharing charges. The term "independent" was inadvertently omitted from laboratory and x-ray services in the previous rule revision.

Additionally, the Department is making one change which was not included in the emergency rule. Subsection (3) specifies the cost sharing amounts for a list of services. The rule currently includes in the list of services adult day treatment services and community-based psychiatric rehabilitation and support services provided by mental health centers. These services are being deleted from the list of services to which cost sharing applies because the Department has instructed providers of these services to bill under other categories of services which are listed in the rule, such as physician services.

Thus, it is unnecessary to include these types of services in the rule. This change in the rule has no effect on the obligation of Medicaid recipients to pay a share of the cost of day treatment services and community-based psychiatric rehabilitation and support services provided at mental health

centers, however. Recipients still pay a share of the cost although the services are now being billed under a different service category.

The Department projects no adverse effect on Medicaid recipients or providers. Under the methodology adopted, all cost sharing amounts will be limited to a maximum of \$5 per visit or prescription. Therefore, recipient cost sharing will be reduced for any Medicaid service greater than \$100 based on the Medicaid allowed amount. The administrative burden of computing and collecting cost sharing amounts will be significantly reduced. The Department expects these amendments to benefit both recipients and providers.

As a result of these changes in cost sharing requirements, it is estimated that the Department's expenditures for payments to Medicaid providers will increase \$357,690 for Fiscal Year 2003 and \$372,568 for Fiscal Year 2004. Conversely, the amounts Medicaid recipients will pay for cost sharing will decrease by \$357,690 for Fiscal Year 2003 and \$372,568 for Fiscal Year 2004. Theoretically, there will be no change in revenue received by Medicaid providers as a result of these changes, because these changes do not affect the amount Medicaid pays for specific services but merely changes the way the Medicaid payment for a service is shared by the Department and the recipient. However, as a practical matter, these changes should increase the total amounts providers receive for services, since recipients were sometimes not able to pay the higher cost sharing amounts required under the old rule.

The Department estimates that these changes will affect 33,500 Medicaid recipients and 11,600 enrolled providers.

4. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210 no later than 5:00 p.m. on October 24, 2002. Data, views or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

5. The Office of Legal Affairs, Department of Public Health and Human Services has been designated to preside over and conduct the hearing.

Dawn Sliva
Rule Reviewer

/s/ Gail Gray
Director, Public Health and
Human Services

Certified to the Secretary of State September 16, 2002.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the)	NOTICE OF PUBLIC HEARING
amendment of ARM 37.70.107,)	ON PROPOSED AMENDMENT
37.70.110, 37.70.305,)	
37.70.312, 37.70.401,)	
37.70.402, 47.70.406,)	
37.70.407, 37.70.408,)	
37.70.601, 37.70.608,)	
37.71.107, 37.71.110,)	
37.71.301, 37.71.601 and)	
37.71.602 pertaining to)	
(LIEAP) and (LIWAP))	

TO: All Interested Persons

1. On October 16, 2002, at 11:00 a.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed amendment of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on October 8, 2002, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

2. The rules as proposed to be amended provide as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.70.107 REFERRALS TO THE DEPARTMENT OF REVENUE JUSTICE

(1) When requested by the department, the department of revenue justice shall have the power and duty to:

(a) and (b) remain the same.

(2) The ~~program integrity~~ audit and compliance bureau is the liaison between the department and the department of revenue justice. Referrals of fraud and requests for investigation must be sent to the Department of Public Health and Human Services, ~~Program Integrity Bureau, Quality Assurance Division, Audit and Compliance Bureau, 2401 Colonial Drive,~~ P.O. Box 4210 202953, Helena, ~~Montana 59604-4210~~ MT 59620-2953, before they are referred to the department of revenue justice. When the department of revenue justice makes a direct request to the local contractor for case information, the information may be sent directly to the department of revenue justice.

AUTH: Sec. 53-2-201, MCA
IMP: Sec. 53-2-201, MCA

37.70.110 FRAUD/TRANSFER OF PROPERTY (1) remains the same.

(2) If an individual appears to have received assistance fraudulently, the local contractor must report all facts of the matter to the program integrity bureau. The bureau may in turn refer the matter to the department of revenue justice or the county attorney of the county in which the recipient resides for further action.

(3) through (5)(b) remain the same.

AUTH: Sec. 53-2-201, MCA
IMP: Sec. 53-2-201, MCA

37.70.305 APPLICATION (1) and (2) remain the same.

(3) An application for low income energy assistance generally must be filed during the heating season for which assistance is being sought, that is, between October 1 and April 30. However, at the option of the department, applicants who use certain types of heating fuel which are sold at lower prices during the summer months or applicants for emergency services between May 1 and September 30 may be permitted to file their applications prior to October 1 of the heating season for which they are seeking assistance.

(4) through (6) remain the same.

AUTH: Sec. 53-2-201, MCA
IMP: Sec. 53-2-201, MCA

37.70.312 NOTIFICATION OF ELIGIBILITY (1) An individual who makes application for low income energy assistance and weatherization will receive written notice of eligibility ~~within 45 days of the date of completed application.~~ If the applicant is determined ineligible, notification shall include the reasons for nonapproval. ~~The notice of decision shall be made by the local contractor immediately following final decision on the application.~~

AUTH: Sec. 53-2-201, MCA
IMP: Sec. 53-2-201, MCA

37.70.401 DEFINITIONS (1) through (8) remain the same.

(9) "Licensed group-living situation" means a facility that is licensed by the department ~~or another appropriate agency in the state~~ and in which housing is provided in a home-like setting on a long-term or permanent basis to individuals or households, including ~~but not limited to~~ community homes for persons with developmental disabilities licensed under 53-20-305, MCA~~;~~. It does not include community homes for persons with severe disabilities licensed under 52-4-203, MCA~~;~~ or youth care facilities licensed under ~~41-3-1142~~ 52-2-622, MCA, shelters for homeless or abused individuals, halfway houses, nursing homes or

convalescent centers or other residential treatment facilities which provide shelter in an institutional setting.

(10) through (16) remain the same.

AUTH: Sec. 53-2-201, MCA
IMP: Sec. 53-2-201, MCA

37.70.402 ELIGIBILITY REQUIREMENTS FOR CERTAIN TYPES OF INDIVIDUALS AND HOUSEHOLDS (1) and (2) remain the same.

(3) Individuals living in ~~licensed group-living situations or shelters~~, including recipients of SSI, TANF-funded cash assistance or county or tribal general assistance, are not eligible for low income energy assistance. Individuals living in licensed group-living situations may be eligible if they meet all other requirements for eligibility.

(4) through (7) remain the same.

AUTH: Sec. 53-2-201, MCA
IMP: Sec. 53-2-201, MCA

37.70.406 TABLES OF INCOME STANDARDS (1) The income standards in the table in (2) below are the ~~2001~~ 2002 U.S. department of health and human services poverty guidelines for households of different sizes. This table applies to all households, including self-employed households.

(a) Households with annual gross income at or below 150% of the ~~2001~~ 2002 poverty guidelines are financially eligible for low income energy assistance. Households with an annual gross income above 150% of the ~~2001~~ 2002 poverty guidelines are ineligible for low income energy assistance, unless the household is automatically financially eligible for LIEAP benefits as provided in ARM 37.70.402 because all members of the household are receiving SSI, TANF-funded case assistance, or county or tribal general assistance.

(2) Annual income standards for all households:

<u>Family Size</u>	<u>Poverty Guideline</u>	<u>150 Percent</u>
One	\$ 8,590 <u>\$ 8,860</u>	\$12,885 <u>\$13,290</u>
Two	11,610 <u>11,940</u>	17,415 <u>17,910</u>
Three	14,630 <u>15,020</u>	21,945 <u>22,530</u>
Four	17,650 <u>18,100</u>	26,475 <u>27,150</u>
Five	20,670 <u>21,180</u>	31,005 <u>31,770</u>
Six	23,690 <u>24,260</u>	35,535 <u>36,390</u>
Additional member add	3,020 <u>3,080</u>	4,350 <u>4,620</u>

AUTH: Sec. 53-2-201, MCA
IMP: Sec. 53-2-201, MCA

37.70.407 CALCULATING INCOME (1) Excluded from income are the following types of unearned income and deductions:

(a) through (h) remain the same.

(i) all monies awarded to Indian tribes by the Indian claims commission or court of claims as authorized by P.L. 92-254, 93-134, 94-540, 94-114 95-433, 97-408 or other applicable awards as provided in public law;

(j) through (r) remain the same.

(s) one-time insurance payments, ~~or~~ compensation for injury or payments from federal or state crime victim compensation programs which do not exceed \$10,000;

(t) through (v) remain the same.

AUTH: Sec. 53-2-201, MCA

IMP: Sec. 53-2-201, MCA

37.70.408 RESOURCES (1) through (3) remain the same.

(4) In fiscal year ~~2002~~ 2003, a household will be eligible if its total countable non-business resources do not exceed ~~\$7,983~~ \$8,222 for a single person, ~~\$11,974~~ \$12,333 for two persons and an amount equal to ~~\$11,974~~ \$12,333 plus ~~\$798~~ \$822 for each additional household member, up to a maximum of ~~\$15,965~~ \$16,444 per household. In addition, the household may have business assets whose equity value does not exceed \$12,500.

(5) through (5)(b) remain the same.

AUTH: Sec. 53-2-201, MCA

IMP: Sec. 53-2-201, MCA

37.70.601 BENEFIT AWARD (1) The benefit matrices in (1)(c) and (1)(d) are used to establish the benefit payable to an eligible household for a full winter heating season (October ~~thru~~ through April). The benefit varies by household income level, type of primary heating fuel, the type of dwelling (single family unit, multi-family unit, mobile home), the number of bedrooms in the dwelling, and the heating districts in which the household is located, to account for climatic differences across the state.

(a) and (b) remain the same.

(c) The following table of base benefit levels takes into account the number of bedrooms in a house, the type of dwelling structure, and the type of fuel used as a primary source of heating:

TABLE OF BENEFIT LEVELS

(i) SINGLE FAMILY

# BEDROOMS	NATURAL					
	GAS	ELECTRIC	PROPANE	FUEL OIL	WOOD	COAL
ONE	\$ 302	\$ 350	\$ 515	\$ 356	\$220	\$174
TWO	439	509	749	517	320	253
THREE	598	693	1,021	704	435	345
FOUR	823	953	1,404	969	599	474

<u># BEDROOMS</u>	<u>NATURAL</u>					
	<u>GAS</u>	<u>ELECTRIC</u>	<u>PROPANE</u>	<u>FUEL OIL</u>	<u>WOOD</u>	<u>COAL</u>
<u>ONE</u>	<u>\$ 352</u>	<u>\$ 656</u>	<u>\$ 601</u>	<u>\$ 537</u>	<u>\$ 374</u>	<u>\$296</u>
<u>TWO</u>	<u>512</u>	<u>954</u>	<u>783</u>	<u>781</u>	<u>544</u>	<u>430</u>
<u>THREE</u>	<u>697</u>	<u>1,300</u>	<u>1,190</u>	<u>1,064</u>	<u>741</u>	<u>586</u>
<u>FOUR</u>	<u>960</u>	<u>1,788</u>	<u>1,637</u>	<u>1,463</u>	<u>1,019</u>	<u>807</u>

(ii) MULTI-FAMILY

<u># BEDROOMS</u>	<u>NATURAL</u>					
	<u>GAS</u>	<u>ELECTRIC</u>	<u>PROPANE</u>	<u>FUEL OIL</u>	<u>WOOD</u>	<u>COAL</u>
<u>ONE</u>	<u>\$ 255</u>	<u>\$ 296</u>	<u>\$ 436</u>	<u>\$ 378</u>	<u>\$186</u>	<u>\$147</u>
<u>TWO</u>	<u>384</u>	<u>445</u>	<u>656</u>	<u>569</u>	<u>280</u>	<u>221</u>
<u>THREE</u>	<u>564</u>	<u>654</u>	<u>963</u>	<u>835</u>	<u>410</u>	<u>325</u>
<u>FOUR</u>	<u>659</u>	<u>764</u>	<u>1,125</u>	<u>976</u>	<u>479</u>	<u>379</u>

<u># BEDROOMS</u>	<u>NATURAL</u>					
	<u>GAS</u>	<u>ELECTRIC</u>	<u>PROPANE</u>	<u>FUEL OIL</u>	<u>WOOD</u>	<u>COAL</u>
<u>ONE</u>	<u>\$ 298</u>	<u>\$ 555</u>	<u>\$ 508</u>	<u>\$ 571</u>	<u>\$316</u>	<u>\$250</u>
<u>TWO</u>	<u>448</u>	<u>836</u>	<u>765</u>	<u>860</u>	<u>476</u>	<u>377</u>
<u>THREE</u>	<u>658</u>	<u>1,226</u>	<u>1,123</u>	<u>1,261</u>	<u>698</u>	<u>553</u>
<u>FOUR</u>	<u>769</u>	<u>1,433</u>	<u>1,311</u>	<u>1,474</u>	<u>816</u>	<u>646</u>

(iii) MOBILE HOME

<u># BEDROOMS</u>	<u>NATURAL</u>					
	<u>GAS</u>	<u>ELECTRIC</u>	<u>PROPANE</u>	<u>FUEL OIL</u>	<u>WOOD</u>	<u>COAL</u>
<u>ONE</u>	<u>\$254</u>	<u>\$295</u>	<u>\$ 434</u>	<u>\$ 314</u>	<u>\$185</u>	<u>\$147</u>
<u>TWO</u>	<u>372</u>	<u>431</u>	<u>635</u>	<u>459</u>	<u>271</u>	<u>214</u>
<u>THREE</u>	<u>493</u>	<u>571</u>	<u>841</u>	<u>609</u>	<u>359</u>	<u>284</u>
<u>FOUR</u>	<u>550</u>	<u>637</u>	<u>939</u>	<u>680</u>	<u>401</u>	<u>317</u>

<u># BEDROOMS</u>	<u>NATURAL</u>					
	<u>GAS</u>	<u>ELECTRIC</u>	<u>PROPANE</u>	<u>FUEL OIL</u>	<u>WOOD</u>	<u>COAL</u>
<u>ONE</u>	<u>\$297</u>	<u>\$ 553</u>	<u>\$ 506</u>	<u>\$ 474</u>	<u>\$315</u>	<u>\$250</u>
<u>TWO</u>	<u>434</u>	<u>808</u>	<u>740</u>	<u>694</u>	<u>461</u>	<u>365</u>
<u>THREE</u>	<u>575</u>	<u>1,072</u>	<u>981</u>	<u>919</u>	<u>611</u>	<u>484</u>
<u>FOUR</u>	<u>642</u>	<u>1,196</u>	<u>1,095</u>	<u>1,026</u>	<u>682</u>	<u>540</u>

(d) remains the same.

AUTH: Sec. 53-2-201, MCA
IMP: Sec. 53-2-201, MCA

37.70.608 ADJUSTMENT OF PAYMENTS TO AVAILABLE FUNDS

(1) When funds are not available to serve all eligible households, the department will may, at its option, take any or all of the following steps in sequential order as needed:

(a) through (c) remain the same.

AUTH: Sec. 53-2-201, MCA

IMP: Sec. 53-2-201, MCA

37.71.107 REFERRALS TO THE DEPARTMENT OF REVENUE JUSTICE (1) When requested by the department, the department of revenue justice shall have the power and duty to:

(a) and (b) remain the same.

(2) The program integrity audit and compliance bureau is the liaison between the department and the department of revenue justice. Referrals of fraud and requests for investigation must be sent to the Department of Public Health and Human Services, Program Integrity Bureau, Quality Assurance Division, Audit and Compliance Bureau, 2401 Colonial Drive, P.O. Box 4210 202953, Helena, Montana 59604-4210 MT 59620-2953, before they are referred to the department of revenue justice. When the department of revenue justice makes a direct request to the local contractor for case information, the information may be sent directly to the department of revenue justice.

AUTH: Sec. 53-2-201 and 90-4-201, MCA

IMP: Sec. 90-4-201 and 90-4-202, MCA

37.71.110 FRAUD (1) remains the same.

(2) If an individual appears to have received assistance fraudulently, the local contractor must report all facts of the matter to the program integrity audit and compliance bureau. The bureau may in turn refer the matter to the department of revenue justice or the county attorney of the county in which the recipient resides for further action.

AUTH: Sec. 53-2-201 and 90-4-201, MCA

IMP: Sec. 90-4-201 and 90-4-202, MCA

37.71.301 NOTIFICATION OF ELIGIBILITY DETERMINATION

(1) An individual who makes application for low income weatherization assistance will receive written notice of eligibility including priority for service within 45 days of the date of application. If the applicant is determined ineligible, notification shall include the reasons for nonapproval. The notice of decision shall be made by the designated local contractor immediately following final decision on the application.

(2) and (3) remain the same.

AUTH: Sec. 53-2-201 and 90-4-201, MCA

IMP: Sec. 90-4-201 and 90-4-202, MCA

37.71.601 ELIGIBILITY FOR SERVICE, PRIORITIES

(1) Dwellings which have been weatherized after September 30, ~~1985~~ 1993, with U.S. department of energy funds or with low income energy assistance program (LIEAP) weatherization or ~~Montana power company northwestern energy~~ free weatherization funds after January 1, 1995 are not eligible for weatherization services. LIEAP weatherization funds and/or ~~Montana power company northwestern energy~~ free weatherization funds may be used at any time to address a weatherization related imminent threat to the health or safety of an otherwise eligible household or to replace or make cost effective modifications to an otherwise eligible household's heating system to utilize a less expensive energy source.

(2) Community residential facilities as defined at 76-2-411, MCA which are the residence for low-income elderly or handicapped individuals are eligible for weatherization.

(3) through (7) remain the same.

AUTH: Sec. 53-2-201 and 90-4-201, MCA

IMP: Sec. 53-2-201, 90-4-201 and 90-4-202, MCA

37.71.602 DETERMINING LOW INCOME WEATHERIZATION ASSISTANCE (1) Weatherization assistance will be made to eligible households in accordance with the state standard of prioritized measures for sample dwellings as established in (3) below.

(2) Dwellings chosen to be weatherized shall receive those measures determined to be cost effective as defined in 10 CFR, Ppart 440, as amended through ~~March 4, 1993~~ February 1, 2002. The department hereby adopts and incorporates by reference 10 CFR, Ppart 440, as amended through ~~March 4, 1993~~ February 1, 2002. A copy of these federal regulations may be obtained from the Department of Public Health and Human Services, ~~Child and Family Human and Community Services Division, Cogswell Building 1400 Broadway~~, P.O. Box 202951, Helena, MT 59620-2951.

(3) through (8) remain the same.

AUTH: Sec. 53-2-201 90-4-201, MCA

IMP: Sec. 90-4-201 and 90-4-202, MCA

3. The Low Income Energy Assistance Program (LIEAP) is a federally funded program to help low income households pay their home heating costs. The maximum income standards used to determine whether a household is eligible for LIEAP benefits are contained in ARM 37.70.406. These income standards are computed as a specified percentage of the federal poverty guidelines issued annually by the U.S. Department of Health and Human Services (HHS). The standards currently in ARM 37.70.406 are based on the HHS poverty guidelines for 2001.

HHS updates the poverty guidelines each year to take into account increases in the cost of living. The amendment of ARM 37.70.406 is therefore necessary to provide that the 2002 poverty guidelines rather than the 2001 guidelines will be used

to determine LIEAP eligibility and benefit amount for the heating season which runs from October 1, 2002 through April 30, 2003 and to insert new income standards based on the 2002 poverty guidelines in the tables of income standards. If the Department did not use the 2002 guidelines, which are higher, households might be ineligible for benefits or receive a smaller benefit due to inflationary increases in the household's income which do not reflect an increase in actual buying power.

ARM 37.70.407 sets forth the rules for calculating income for LIEAP eligibility purposes. Subsection (1) of this rule contains a list of types of income which are excluded (that is, are not counted) in determining LIEAP eligibility. Subsection (1)(r) is being amended to add a type of income which will be excluded. As amended, (1)(r) will provide for the exclusion of payments from federal and state crime victim compensation programs, as long as the payments do not exceed \$10,000. The Department is excluding these payments at the suggestion of the LIEAP Round Table. The LIEAP Round Table is an informal meeting of LIEAP contractors and other individuals interested in LIEAP issues which occurs once a year. This change is being made because if these payments are counted and make the crime victim ineligible for LIEAP, this would negate, at least in part, the benefit of receiving such compensation.

In determining eligibility for LIEAP, the Department considers an applicant's resources as well as income, that is, the Department looks at what assets the applicant has which can be used to pay heating costs. As a result of the amendment of ARM 37.70.407, payments from crime victim compensation programs will not be counted as either income or as a resource in determining LIEAP eligibility. ARM 37.70.408, the LIEAP rule governing resources, lists resources which are counted rather than specifying excluded resources and currently does not mention such payments as a countable resource. Therefore, it is not necessary to amend ARM 37.70.408 to provide that these payments are an excluded resource.

Also, a correction is being made in (1)(i) of ARM 37.70.407 regarding income, which states that monies awarded to Indian Tribes by the Indian Claims Commission as authorized by specific public laws are excluded income. Currently this subsection refers, incorrectly, to Public Law 94-114. The reference to Public Law 94-114 is being deleted and a reference to Public Law 95-433 is being substituted.

Subsection (4) of ARM 37.70.408 regarding resources sets the maximum amount of non-business resources which households of varying sizes can have and still qualify for LIEAP. The Department is increasing these dollar amounts by 3% to adjust for inflation, as provided in (5) of ARM 37.70.408. Subsection (5) states that the dollar limits on non-business resources will be revised annually. The revised limits are computed by multiplying the current dollar limits by the percentage increase

in the national consumer price index (CPI) for the previous calendar year or by 3%, whichever is less. The CPI for 2001 was 3.3%, so the Department has used the lesser figure of 3% as the multiplier.

Several years ago the Department amended ARM 37.70.402, which contains eligibility requirements for certain types of individuals and households, to prohibit individuals who live in licensed group-living situations from receiving LIEAP benefits. At the time the Department made this change, it was thought that such individuals had less need for assistance than other low income individuals. Since then the Department has obtained more information about the financial arrangements under which most group homes operate and has determined that individuals in group living situations who meet the income, resources and other eligibility requirements for LIEAP need assistance with their heating costs as much as other low income individuals.

Advocates for disabled individuals living in group homes demonstrated to the Department that residents of group homes, many of whom live on fixed incomes, had fewer funds available for food and other basic necessities as a result of the decision to eliminate LIEAP benefits, since they had to spend more of their limited funds on heating costs. The Department therefore concluded that otherwise eligible residents of group homes are in need of assistance with heating costs and should not be prohibited from receiving LIEAP benefits simply because of their group living arrangements.

Thus, the portion of (3) of ARM 37.70.402 which states that individuals in licensed group-living situations are ineligible for LIEAP is being deleted, because such individuals would unfairly suffer economic hardship if the Department did not make this change in LIEAP policy. Subsection (3) still prohibits persons living in shelters from receiving LIEAP benefits, however, because shelters are substantially different from group homes. A resident of a group home typically lives there on a permanent rather than temporary basis, and each resident is required to pay his or her share of utility costs and other living expenses from the resident's income. Shelters, by comparison, typically provide a temporary home for individuals, and their residents are not required to pay a share of the shelter's overhead expenses. Therefore, the Department believes it is appropriate to grant LIEAP benefits to residents of group homes while continuing to deny such benefits to individuals who live in shelters.

It is also necessary to amend the definition of "licensed group-living situation" in ARM 37.70.401, to state with more specificity what types of facilities qualify for LIEAP assistance. This is necessary because it has been suggested to the Department that residents of some types of facilities which provide shelter in an institutional setting or which provide only a temporary home for their residents should be eligible for

LIEAP. The Department does not intend residents of such facilities to be eligible for LIEAP. It is therefore necessary to provide a more detailed definition of what the term "licensed group-living situation" does and does not mean, in order to avoid misunderstandings and disputes over eligibility of individuals living in group settings.

ARM 37.70.601 contains tables of benefit amounts which are used to establish the amount of benefits an eligible household will receive. The size of the household's benefit depends on income level, type of primary heating fuel, the type of dwelling and number of bedrooms, and the heating district in which the household is located. The benefit amounts in the table are being revised based on the expected appropriation of federal funds for the Montana LIEAP program as well as fuel cost projections for the upcoming heating season and an estimate of the number of households which will apply for and be found eligible for LIEAP.

ARM 37.70.608 addresses adjustment of payments based on available funds. LIEAP is funded with 100% federal funds received in the form of a block grant, meaning that Montana receives a fixed amount of dollars every year to fund LIEAP in that state. The grant amount for the year does not increase or decrease regardless of how many households apply for assistance in that year or how much assistance they are entitled to receive. The Department attempts to ensure that available funding for a given year is sufficient to provide benefits to all eligible families during that year by setting benefit amounts at levels consistent with the estimated number of eligible households and the federal appropriation.

However, if the number of households determined eligible for benefits exceeds the Department's estimate, the LIEAP appropriation may be less than the total amount of benefits due to eligible households. ARM 37.70.608 currently authorizes the Department to take three steps, in sequential order, when funds are not available to serve all eligible households, as follows: first, to reduce the maximum benefit amounts; second, to limit eligibility to households which have a member who is 60 years of age or older or a member who is disabled; and three, to deny all subsequent applications.

The Department now proposes to amend ARM 37.70.608 by deleting the requirement that the steps be taken in sequence and providing instead that the Department may take any steps in any order at the Department's discretion. This change was discussed by the LIEAP Round Table and is being implemented because it is desirable for the Department to have flexibility to deal with a shortage of funds in the manner it considers most appropriate in the current circumstances.

ARM 37.70.305 and 37.70.312 address the application process for LIEAP. Subsection (3) of ARM 37.70.305 provides that

applications must be filed between October 1 and April 30 of the current heating season or, at the Department's option, at a specified date prior to October 1 for households which heat with types of fuel which are sold at lower prices during the summer months. Subsection (3) is now being amended to allow applications to be filed between May 1 and September 30 for applicants seeking emergency services from May through September. Emergency services as defined in ARM 37.70.901 are services to alleviate conditions which present a serious, immediate threat to the health and safety of the household, such as a defective and hazardous heating system.

ARM 37.70.901 provides that households which are eligible for LIEAP are potentially eligible for emergency services. Since a household must be eligible for LIEAP to qualify for emergency services, an applicant for emergency services must complete a LIEAP application in order to receive emergency services. This amendment is necessary so that households which file an application between May 1 and September 30 to obtain emergency services at that time of year do not have to file another application between October 1 and April 30 of the immediately following heating season in order to obtain regular LIEAP benefits. By allowing such households to file only one application, this amendment will promote efficiency and convenience for both the household and the Department's contractor which determines LIEAP eligibility.

ARM 37.70.312 states that LIEAP applicants will be given written notice of the decision on their eligibility within 45 days. It further specifies that the notice will be made by the contractor. In the past the Department through its contractor has sent one notice which states whether the application has been approved and, if so, the amount of the benefit the applicant will receive. In recent years, however, Congress sometimes has not authorized the LIEAP appropriation for the states until late November or even December. Although the Department's contractor is generally able to determine eligibility within 45 days after the date of application, the Department does not wish to send out notices guaranteeing applicants a specific LIEAP benefit amount until the Department knows the exact amount of its LIEAP funding for the year.

Thus, in cases where an applicant files an application early in October, or earlier at the Department's option, the LIEAP appropriation may not be finalized in time to send a notice specifying a benefit amount within 45 days. It is costly and inefficient to send one notice within 45 days which states whether the application has been approved and another notice later when the benefit amount can be specified based on the final LIEAP appropriation.

Therefore the Department proposes to eliminate the requirement to send a notice within 45 days of the date of application, as the 45 day deadline is not required by federal law, nor does the

Department believe it is required by due process. In most instances the notice will still be sent within 45 days, but the Department wishes to have the option of exceeding 45 days if the federal LIEAP appropriation is not finalized in time to meet the 45 day deadline.

The Department also proposes to eliminate the language of ARM 37.70.312 stating that the notice will be sent by the contractor. This provision is not necessary because this is an internal matter which does not affect the rights of the applicant and does not need to be set in rule. The applicant will still receive a notice, but it may be generated by either the Department or its contractor.

ARM 37.70.107 and 37.70.110 address procedures for dealing with fraud or suspected fraud by LIEAP applicants and recipients. These rules currently contain outdated references to the Program Integrity Bureau and the Department of Revenue. In the past the Departmental bureau which dealt with public assistance fraud was the Program Integrity Bureau, but it has now been renamed the Audit and Compliance Bureau. Similarly, Department of Revenue formerly did fraud investigations for the Department, but the Department of Justice now conducts these investigations. The amendment of these rules is therefore necessary to correct this terminology.

The Low Income Weatherization Program (LIWAP) provides improvements, repairs or other modifications to dwellings for the purpose of reducing a household's energy burden, such as the installation of insulation, storm windows and doors and more efficient and/or safer heating systems. Households which have been found eligible for LIEAP are also eligible for weatherization services, subject to additional requirements and priorities specified in ARM 37.71.601.

None of the proposed amendments to the LIWAP rules make significant changes to LIWAP policy. They are primarily for the purpose of correcting terminology or updating the date of applicable federal regulations.

ARM 37.71.107 and 37.71.110 address procedures for dealing with fraud or suspected fraud by LIWAP applicants and recipients. These rules currently contain outdated references to the Program Integrity Bureau and the Department of Revenue. In the past the Departmental bureau which dealt with public assistance fraud was the Program Integrity Bureau, but it has now been renamed the Audit and Compliance Bureau. Similarly, Department of Revenue formerly did fraud investigations for the Department, but the Department of Justice now conducts these investigations. The amendment of these rules is therefore necessary to correct this terminology.

ARM 37.71.601, which states the priorities for providing weatherization services to eligible households, currently

provides that dwellings weatherized after September 30, 1985 with U.S. Department of Energy funds or with LIEAP weatherization funds or Montana Power Company free weatherization funds after January 1, 1995 are not eligible for weatherization services. The reference to the Montana Power Company is being replaced by the name of its successor, NorthWestern Energy Company. The rule will now provide that dwellings are not eligible if they were weatherized with U.S. Department of Energy funds after September 30, 1993, rather than 1985. This amendment is necessary because dwellings weatherized as long ago as 1985 may now need additional weatherization services.

ARM 37.71.602 refers to weatherization measures defined as cost effective in 10 CFR, Part 440, as amended through March 4, 1993. The rule is being updated to reference the regulations as amended through February 1, 2002. The rule also states that copies of the regulation may be obtained from the Department's Child and Family Services, which is no longer the appropriate division. The name of the correct division therefore is being substituted.

ARM 37.71.301 states that LIWAP applicants will be given written notice of the decision on their eligibility within 45 days and specifies that the notice will be made by the contractor. The Department proposes to eliminate the requirement to send a notice within 45 days of the date of application, as the 45 day deadline is not required by federal law, nor does the Department believe it is required by due process. In most instances the notice will still be sent within 45 days, but the Department wishes to have the option of exceeding 45 days in appropriate cases.

The Department also proposes to eliminate the language of ARM 37.71.301 stating that the notice will be sent by the contractor. This provision is not necessary because this is an internal matter which does not affect the rights of the applicant and does not need to be set in rule. The applicant will still receive a notice of the action taken on the application, but the notice may be generated by either the Department or its contractor.

The Department estimates that 18,000 LIEAP applicants and recipients will be affected by the changes in the income standards, resource limits and benefit amounts. The Department has not been notified of the amount of Montana's LIEAP appropriation for the 2002-2003 heating season but expects that the appropriation will be approximately the same amount as last year. Therefore, it is expected that there will be no increase or decrease in LIEAP expenditures for the upcoming heating season.

4. The Department proposes to apply these changes to the LIEAP rules retroactive to August 1, 2002. This is necessary

because the Department will be accepting and processing applications from clients using certain types of heating fuels beginning August 1, although applications may not be filed by most clients until October 1. The Department wishes to apply the higher 2002 income guidelines and benefit amounts in determining eligibility and benefit awards for these early applications.

5. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on October 24, 2002. Data, views or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

6. The Office of Legal Affairs, Department of Public Health and Human Services has been designated to preside over and conduct the hearing.

Dawn Sliva
Rule Reviewer

/s/ Gail Gray
Director, Public Health and
Human Services

Certified to the Secretary of State September 16, 2002.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the adoption)	NOTICE OF PUBLIC HEARING
of Rule I and the amendment)	ON PROPOSED ADOPTION,
of ARM 37.5.125, 37.30.101,)	AMENDMENT AND REPEAL
37.30.111, 37.30.304,)	
37.30.305, 37.30.405,)	
37.30.407, 37.30.706,)	
37.30.730, 37.30.1002,)	
37.30.1401, 37.30.1602,)	
37.30.1613, and 37.31.401 and)	
the repeal of 37.30.106,)	
37.30.301, 37.30.310,)	
37.30.411, 37.30.701,)	
37.30.702, 37.30.705,)	
37.30.711, 37.30.712,)	
37.30.713, 37.30.717,)	
37.30.718, 37.30.719,)	
37.30.723, 37.30.724,)	
37.30.725, 37.30.734,)	
37.30.735, 37.30.736,)	
37.30.805, 37.30.1403,)	
37.30.1603, 37.30.1608, and)	
37.30.1612 pertaining to)	
vocational rehabilitation and)	
independent living services)	
)	

TO: All Interested Persons

1. On October 25, at 10:00 a.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed adoption, amendment and repeal of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on October 16, 2002, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

2. The rule as proposed to be adopted provides as follows:

RULE I VOCATIONAL REHABILITATION POLICY: INCORPORATION BY REFERENCE OF FEDERAL AND STATE AUTHORITY (1) The department,

except as otherwise provided in this chapter, hereby adopts and incorporates by reference, for purposes of administering the program of vocational rehabilitation services, the federal regulations specified in (2) as presented in the July 1, 2001 edition of the Code of Federal Regulations (CFR). These federal regulations, adopted by the United States department of education, govern the administration and delivery by the states of various aspects of vocational rehabilitation services.

(2) The following federal regulations govern the administration and delivery of vocational rehabilitation services as specified:

(a) For purposes of generally administering the program:

(i) 34 CFR 361.5 - "Applicable definitions".

(b) For purposes of administering eligibility determinations and order of selection:

(i) 34 CFR 361.36 - "Ability to serve all eligible individuals; order of selection".

(ii) 34 CFR 361.41 - "Processing referrals and applications".

(iii) 34 CFR 361.42 - "Assessment for determining eligibility and priority for services".

(iv) 34 CFR 361.43 - "Procedures for ineligibility determination".

(v) 34 CFR 361.44 - "Closure without eligibility determination".

(c) For purposes of administering program information and the provision of referrals:

(i) 34 CFR 361.37 - "Information and referral services".

(d) For purposes of administering confidential personal information:

(i) 34 CFR 361.38 - "Protection, use and release of personal information".

(e) For purposes of implementing individualized planning for service delivery and record of services:

(i) 34 CFR 361.45 - "Development of the individualized plan for employment".

(ii) 34 CFR 361.46 - "Content of the individualized plan for employment".

(iii) 34 CFR 361.47 - "Record of services".

(f) For purposes of the administration of service delivery:

(i) 34 CFR 361.48 - "Scope of vocational rehabilitation services for individuals with disabilities".

(g) For purposes of the implementation of informed choice for the benefit of consumers:

(i) 34 CFR 361.52 - "Opportunity to make informed choice".

(h) For purposes of prior and verbal authorization:

(i) 34 CFR 361.50(e) - "Written policies governing the provision of services for individuals with disabilities".

(i) For purposes of assuring the prior use of comparable services and benefits by consumers:

(i) 34 CFR 361.53 - "Comparable services and benefits".

(j) For purposes of administering closure of consumers from the program and monitoring employment outcomes for

consumers:

(i) 34 CFR 361.55 - "Annual review of individuals in extended employment of other employment under special certificate provisions of the Fair Labor Standards Act".

(ii) 34 CFR 361.56 - "Requirements for closing the record of services of a consumer who has achieved an employment outcome".

(iii) 34 CFR 363.11 - "What information and assurances must be included in the state plan supplement".

(iv) 34 CFR 363.54 - "What requirements must a state meet before it provides for the transition of a consumer to extended services".

(k) For purposes of providing consumers with due process:

(i) 34 CFR 361.57 - "Review of counselor or counselor coordinator decisions".

(3) The department, except as otherwise provided in this chapter, hereby adopts and incorporates by reference, for purposes of administering the program of vocational rehabilitation services, the policies specified in (4), as presented in the September 1, 2002 edition of the Montana Vocational Rehabilitation Policy Manual. Copies of the policies may be obtained through the Department of Public Health and Human Services, Disability Services Division, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210.

(4) The following Montana vocational rehabilitation policies govern the administration and delivery of vocational rehabilitation services as specified:

(a) For purposes of selecting appropriate goods: Montana Vocational Rehabilitation Policy B - "Rates Of Payment".

(b) For purposes of staff and consumer safety: Montana Vocational Rehabilitation Policy C1 - "Personal Safety".

(c) For purposes of conciliation in consumer due process: Montana Vocational Rehabilitation Policy E - "Counselor Determinations".

(d) For purposes of self-employment service provision: Montana Vocational Rehabilitation Policy M1 - "Self-employment".

(e) For purposes of defining "emancipated adult" for financial eligibility determinations: Montana Vocational Rehabilitation Policy ZGD08 - "Definitions".

(f) For purposes of defining "individual with a most significant disability" for federal reporting and order of selection: Montana Vocational Rehabilitation Policy ZGD16 - "Definitions".

(g) For purposes of developing the IPE: Montana Vocational Rehabilitation Policy W - "Core Requirements of IPE".

(h) For purposes of emergency response to IPE change requests: Montana Vocational Rehabilitation Policy X - "On-going IPE Services".

AUTH: Sec. 53-7-102, 53-7-206, 53-7-302 and 53-7-315, MCA
IMP: Sec. 53-7-102, 53-7-103, 53-7-105, 53-7-106, 53-7-108, 53-7-203, 53-7-205, 53-7-302, 53-7-303, 53-7-306, 53-7-310 and 53-7-314, MCA

3. The rules as proposed to be amended provide as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.5.125 VOCATIONAL REHABILITATION AND VISUAL SERVICES PROGRAMS: APPLICABLE HEARING PROCEDURES (1) Hearings relating to the provision of vocational rehabilitation services program or visual services program are available to the extent granted and as provided in ARM 37.30.1401 and ~~37.30.1403~~. The provisions of ARM ~~37.5.304, 37.5.307, 37.5.310, 37.5.311, 37.5.313, 37.5.316, 37.5.318, 37.5.322, 37.5.325, 37.5.328, and 37.5.331, 37.5.334 and 37.5.337~~ do not apply to such hearings.

AUTH: Sec. 53-2-201, 53-6-113, 53-7-102, 53-7-206 and 53-7-315, MCA

IMP: Sec. 53-7-102, 53-7-106, 53-7-206, 53-7-314, 53-7-315 and 53-19-112, MCA

37.30.101 DEFINITIONS (1) "Applicant" means a person who has made formal application to the department to receive vocational rehabilitation or other services administered by the rehabilitative/visual services division Montana vocational rehabilitation program of the department.

~~(2) "Assistive services" means reader services, rehabilitation teaching services, note-taking services, orientation and mobility services, interpreter services, tactile interpreting services, and telecommunications, sensory and other technological aids and devices that compensate for a disability.~~

~~(3) (2) "Blindness" means a visual disability as defined at 53-7-301, MCA.~~

~~(4) "Client" means an applicant who has been determined by the department to be a person with a disability and to be eligible for services through vocational rehabilitation or other services administered by the rehabilitative/visual services divisions of the department and who has agreed to accept such services as the department may determine are appropriate for that person's vocational rehabilitation or other needs.~~

~~(5) (3) "Department" means the department of public health and human services.~~

~~(6) (4) "Dependent" means any relative to a person by blood or marriage or anyone living in the same household with whom a person has a close interpersonal relationship and for whom a person provides a majority of their financial support.~~

~~(7) (5) "Disability" means an existing physical or mental impairment including blindness which significantly limits, or, if not corrected, may significantly limit a person's activities or ability to function in a normal manner.~~

~~(8) "Employability" means a determination that, with the provision of vocational rehabilitation services, a person is likely to enter or retain, as a primary objective, full-time employment, and when appropriate part-time employment, consistent with the capacities or abilities of the person in the competitive labor market or to realize any other vocational outcome the department determines is appropriate.~~

~~(9)~~ (6) "Extended employment" means a supervised work program as defined at 53-7-202, MCA.

~~(10)~~ "Extended evaluation" means an evaluation of an applicant which necessitates the receipt, for an extended period of time, of vocational services otherwise not available to applicants in order to determine the eligibility of the applicant for the vocational rehabilitation services provided through the vocational rehabilitation program administered by the department.

(7) "Financial resource" means financial assets, inclusive of stocks, bonds, certificates of deposit and similar type assets, that can be readily converted to cash, available to the person at the time of the eligibility determination and during the course of the person's receipt of services under an individualized plan for employment. Financial assets do not include resources as provided for in ARM 37.30.411.

(8) "Income" means income as defined in ARM 37.2.702.

~~(11)~~ (9) "Independent living plan" means the written individualized independent living plan (I-I-L-P) prepared by the department for clients of the persons receiving independent living rehabilitation program services. This plan specifies the independent living goals and needs of the client person and the services the department may provide to the client person in order to assist the person in attaining an improved quality of life.

~~(12)~~ "Individualized written rehabilitation program (I.W.R.P.)" means the plan prepared by the department which specifies the vocational rehabilitation goals and needs of the client and the services the department may provide to the client in order to assist the vocational rehabilitation of the client.

~~(13)~~ "Maintenance" means financial support provided to a client as defined at 53-7-101 and 53-7-301, MCA.

(10) "Individualized plan for employment (IPE)" means the plan signed by the person and the qualified Montana vocational rehabilitation counselor which specifies the vocational rehabilitation goals and needs of the consumer and the services the department may provide to the consumer in order to assist the vocational rehabilitation of the consumer.

(11) "Montana vocational rehabilitation program (MVR)" means the program of federal and state authorized vocational rehabilitation services for persons with disabilities provided through the department's disability services division inclusive of those federal programs authorized at 29 USC 701, et seq.

~~(14)~~ (12) "Occupational license" means a license as defined at 53-7-101 and 53-7-301, MCA.

(15) (13) "Orthotic device" means a device that activates or supplements a weakened limb or neuromuscular function.

~~(16)~~ "Person with an employment handicap" means a person who has a disability which constitutes or results in a substantial handicap to employment for the person and who can be reasonably expected to benefit in terms of employability from vocational rehabilitation services.

~~(17)~~ "Person with a severe disability" means a person:

~~(a) who has one or more disabilities;~~

~~(b) whose disability or disabilities seriously limit one or more functional capacities such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills in terms of employability; and~~

~~(c) whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time.~~

~~(18) "Person with a severe disability" for purposes of ARM Title 37, chapter 31 means a person whose ability to function independently in family or community or whose ability to engage or continue in employment is so limited by the severity of a disability that independent living rehabilitation services are required in order to achieve a greater level of independence in functioning in family or community or engaging or continuing in employment.~~

~~(19) (14) "Programs of higher education" are programs of formal education that lead to an advanced academic degree such as a B.A., B.S., M.A. and Ph.D. Programs of higher education do not include career, vocational, or other specialized programs that do not lead to an academic degree.~~

~~(20) (15) "Prosthetic appliance" means an artificial device as defined at 53-7-101 and 53-7-301, MCA.~~

~~(21) "Rehabilitation engineering" means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of and address the barriers confronted by persons with disabilities.~~

~~(22) (16) "Rehabilitation facility" or "rehabilitation program" means a facility or program operated primarily for the provision of vocational rehabilitation services to persons with disabilities.~~

~~(23) (17) "Sheltered employment" means a program of services as defined at 53-7-202, MCA.~~

~~(24) "Substantial handicap to employment" means a disability which severely limits a person's ability to prepare for, obtain or retain employment appropriate to the person's disabilities, background and potential for rehabilitation.~~

~~(25) (18) "Support services" means support services as defined at 53-7-202, MCA.~~

~~(26) "Supported employment" means a program of services to provide competitive work in integrated work settings for persons with severe disabilities for whom competitive employment has traditionally not occurred or for persons for whom competitive employment has been interrupted or intermittent as a result of a severe disability and who, because of their handicap, need ongoing support services to perform such work.~~

~~(27) (19) "Vocational rehabilitation services" means vocational rehabilitation services provided in ARM 37.30.701 34 CFR 361.48. Vocational rehabilitation services for the purposes of subchapters 1 through 7 do not include vocational rehabilitation extended employment services, independent living rehabilitation services and visual medical services as defined in this chapter.~~

~~(28) "Vocational work evaluation" means a comprehensive process that systematically utilizes work, real or simulated, as~~

~~the focal point for assessment and vocational exploration, the purpose of which is to assist persons in vocational development. A vocational work evaluation may rely upon medical, psychological, social, vocational, educational, cultural, and economic data.~~

~~(29) "Work activity" means a program of services in a nonprofit rehabilitation facility providing therapeutic activities for persons with severe disabilities whose physical or mental impairment is so severe as to make their productive capacity inconsequential.~~

~~(30) "Work adjustment training" means a process to foster vocational development through individual and group work, or work related activities that:~~

~~(a) assist persons in understanding the meaning, value and demands of work;~~

~~(b) modify or develop attitudes, personal characteristics, and work behavior; and~~

~~(c) develop functional capacities.~~

AUTH: Sec. 53-7-102, 53-7-203, 53-7-206, 53-7-302, 53-7-315 and 53-19-112, MCA

IMP: Sec. 53-7-101, 53-7-103, 53-7-105, 53-7-106, 53-7-107, 53-7-108, 53-7-109, 53-7-201, 53-7-202, 53-7-203, 53-7-204, 53-7-205, 53-7-206, 53-7-301, 53-7-302, 53-7-303, 53-7-306, 53-7-310, 53-7-314, 53-7-315, 53-19-101, 53-19-102, 53-19-103, 53-19-104, 53-19-105, 53-19-106, 53-19-110 and 53-19-112, MCA

37.30.111 VOCATIONAL REHABILITATION PROGRAM: ORDER OF SELECTION ~~(1) When the department is unable to provide vocational rehabilitation services to all clients due to budgetary or other constraints, the following order of selection will be utilized in determining which clients will receive the services which remain available:~~

~~(a) persons with severe disabilities;~~

~~(b) public safety officers injured during the course of duty;~~

~~(c) other clients.~~

(1) The department, in consultation with the vocational rehabilitation council, may implement an order of selection to limit eligibility for vocational rehabilitation services based upon designation by characteristics of specific populations of persons as having priority in being screened for eligibility and in receipt of services.

(2) The categories and ranking for priority of service among applicants and persons otherwise eligible for services are as follows:

(a) priority one is eligible persons with most significant disabilities experiencing serious limitations in four or more functional capacities.

(b) priority two is eligible persons with most significant disabilities experiencing serious limitations in three or more functional capacities who are not in priority one; and

(c) priority three is eligible persons with significant disabilities experiencing serious limitations in one or more

functional capacities who are not in priority one or two.

(d) priority four is all other eligible persons with disabilities who are not in priorities one, two or three.

(3) Selection of persons to be screened for eligibility within each priority group is based on the earliest dated application.

(4) Implementation of an order of selection does not affect the status for receipt of services for a person who has been previously determined to be eligible for vocational services and who is receiving vocational rehabilitation services through an IPE prior to the date on which an order of selection is implemented.

AUTH: Sec. 53-7-102 and 53-7-315, MCA

IMP: Sec. 53-7-102, 53-7-103, 53-7-105, 53-7-302 and 53-7-303, MCA

37.30.304 VOCATIONAL REHABILITATION PROGRAM: DETERMINATION OF ELIGIBILITY (1) A person may be ~~is~~ eligible for vocational rehabilitation services, if the department determines that the person is ~~a person with an employment handicap.~~

~~(2) Eligibility of an applicant for vocational rehabilitation services is determined by the department to be eligible in accordance with the criteria of this subchapter and subchapters 4 and 7, policies and standards adopted by the department to governing eligibility, and with the criteria adopted in applicable federal law and regulations.~~

~~(3) The determination of an applicant's eligibility for vocational rehabilitation services is based on a thorough diagnostic study of the applicant, inclusive of medical, psychiatric, educational, environmental, cultural, recreational, psychological, social and vocational assessments and upon an assessment of financial need. The study may be conducted by the department in the manner chosen by the department.~~

~~(a) The diagnostic study includes:~~

~~(i) an evaluation of the applicant's employability, personality, intelligence level, education achievements, work experience, vocational aptitudes and interests, personal and social adjustments, employment opportunities, and other pertinent information that may be helpful in determining the nature and scope of services needed;~~

~~(ii) an appraisal of the applicant's patterns of work behavior, ability to acquire occupational skill, and ability to develop work attitudes, work habits, work tolerance, and social behavior patterns suitable for successful job performance. An appraisal may include the utilization of work, simulated or real, to assess and develop the applicant's capacity to perform adequately in a work environment; and~~

~~(iii) any other goods or services provided for the purpose of ascertaining the nature of the applicant's employment handicap and whether it may reasonably be expected that the applicant can benefit from vocational rehabilitation services.~~

~~(4) (2) The department shall make available to aAn applicant may receive those services determined by the~~

department to be necessary and appropriate for assessing the applicant's eligibility.

~~(5)~~ (3) Eligibility of a person for and the receipt of visual medical services, vocational rehabilitation extended employment services and independent living services are is determined in accordance with ARM 37.30.2601 et seq. for visual medical services, ARM 37.30.1602 et seq. for vocational rehabilitation extended employment services and ARM 37.30.1601 et seq. for independent living services.

AUTH: Sec. 53-7-102, 53-7-203, 53-7-302, 53-7-315 and 53-19-112, MCA

IMP: Sec. 53-7-101, 53-7-102, 53-7-103, 53-7-105, 53-7-106, 53-7-107, 53-7-201, 53-7-202, 53-7-203, 53-7-301, 53-7-302, 53-7-306, 53-7-309 and 53-19-103, MCA

37.30.305 VOCATIONAL REHABILITATION PROGRAM: CLIENT ELIGIBILITY CRITERIA (1) Vocational rehabilitation services, except those services necessary for determining the eligibility of ~~an applicant to be a client~~, will be provided by the department for the program, are available only to a person who is a client determined by the department to be eligible for services.

(2) ~~Eligibility to be a client of~~ for vocational rehabilitation services is based on the following criteria:

(a) ~~the person has a disability that constitutes or results in a substantial handicap to employment; and presence of physical or mental impairment;~~

(b) ~~there is a reasonable expectation that vocational rehabilitation services may benefit the person in terms of employability within a reasonable period of time. the person's impairment constituting or resulting in a substantial impediment to the person's employment; and~~

(c) the vocational rehabilitation services necessary for the person to prepare for, secure, retain or regain employment are consistent with the person's unique strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice.

(i) ~~Employability is determined relative to a person's abilities and need not be limited to the competitive labor market.~~

(ii) ~~Rehabilitation will not be undertaken if the person's employment handicap arises from a disability that is medically diagnosed to be continuing in nature with little or no prospect of rehabilitation.~~

(3) Any applicant who has been determined eligible for social security old age, survivors and disability insurance (OASDI) or supplemental security income (SSI) benefits under Titles II and XVI of the Social Security Act is presumed eligible for vocational rehabilitation services and considered an individual with a significant disability unless the department determines the applicant is not otherwise eligible for services.

~~(3)~~ (4) Eligibility of a person for the visual medical

services, vocational rehabilitation extended employment services and independent living services are is determined in accordance with ARM 37.30.2608 for visual medical services, ARM 37.30.1613 for vocational rehabilitation extended employment services and ARM 37.31.401 for independent living services.

~~(4)~~ (5) Eligibility to be a client will for vocational rehabilitation services is not be determined:

(a) with regard to sex, race, age, religion, creed, color, or national origin;

(b) solely on the basis of type of disability;

(c) upon an age limit which will, of itself, result in a finding of ineligibility for any individual person who otherwise meets the basic eligibility requirements; or

(d) upon a residence requirement, durational or other, which excludes from services any individual person who is in the state and who would be eligible for vocational rehabilitation services otherwise.

~~(5)~~ (6) A person will is not be eligible to be a client for vocational rehabilitation services unless the department determines that the person is utilizing all public and private benefits and services, other than rehabilitation technology, to which the person may be otherwise entitled and which are of a comparable nature to those available through the vocational rehabilitation program of the department.

~~(6)~~ (7) A client consumer must participate in and agree to accept such vocational rehabilitation services as the consumer and the department determines are appropriate for the person's consumer's vocational rehabilitation in accordance with the objectives of the person's IWRP consumer's IPE.

AUTH: Sec. 53-7-102, 53-7-203, 53-7-302, 53-7-315 and 53-19-112, MCA

IMP: Sec. 53-7-101, 53-7-102, 53-7-103, 53-7-105, 53-7-106, 53-7-107, 53-7-201, 53-7-202, 53-7-203, 53-7-301, 53-7-302, 53-7-303, 53-7-304, 53-7-305, 53-7-306, 53-7-307, 53-7-308, 53-7-309 and 53-19-103, MCA

37.30.405 VOCATIONAL REHABILITATION PROGRAM: FINANCIAL RESPONSIBILITY OF CONSUMER FOR COST OF SERVICES (1) A consumer is financially responsible for the payment for the cost of vocational rehabilitation services specified in the consumer's IPE to the extent that the department determines in accordance with ARM 37.30.407 that the consumer has income and financial resources available for that purpose.

(a) The consumer may commit and expend further income and financial resources for the costs of the services in the IPE if the counselor and the consumer agree a portion of that income or resources can be contributed.

(2) A consumer who is eligible for social security old age, survivors and disability insurance (OASDI) or supplemental security income (SSI) benefits under Titles II and XVI of the Social Security Act is not financially responsible for the payment for any of the costs of vocational rehabilitation services.

(3) A consumer is financially responsible for the payment of the cost of the vocational rehabilitation services specified in the consumer's IPE, except for rehabilitation technology, to the extent that the consumer is eligible for benefits of another governmental program or other source of funding that is available for the payment of the cost of the specified services.

(a) If benefits from any other program or source are not immediately available for the payment of the costs of the vocational rehabilitation services specified in the consumer's IPE, the department may temporarily fund the consumer's vocational rehabilitation services until those other benefits become available.

(b) If the determination of the availability of benefits from another source would delay the provision of vocational rehabilitation services to a consumer who is at extreme medical risk or who is to receive an immediate job placement opportunity, the department may make payment for services to the consumer until those other benefits become available. The determination of extreme medical risk is based upon medical evidence provided by an appropriate licensed professional.

~~(1) (4) The financial need responsibility of an individual a consumer is initially determined by the department prior to the provision to an individual the consumer of any services listed in the individual's IWRP consumer's IPE.~~

~~(a) The financial need responsibility of an individual a consumer is redetermined at any time that there is a change in the income and resources available to the individual consumer.~~

~~(2) Any person eligible for vocational rehabilitation services is financially responsible for the services specified in the person's IWRP, except to the extent that the department determines that the person has financial need and the department determines that the financial need may be met in part or in whole by the vocational rehabilitation program or by other programs.~~

~~(3) (5) Any person eligible for vocational rehabilitation services may receive the~~ The following services are available regardless of the person's financial need responsibility status:

~~(a) information and referral;~~ assessment for determining eligibility and priority for vocational rehabilitation services except for trial work experiences type services provided to a person with a significant disability during an exploration of the person's abilities, capabilities and capacity to perform in work situations;

~~(b) services necessary for an assessment for vocational rehabilitation eligibility;~~

~~(c) (b) vocational rehabilitation counseling and guidance;~~

~~(d) (c) placement referral and related services;~~

~~(e) (d) post employment services for which there is no direct expenditure of program funds~~ job development and placement related services;

~~(f) (e) instructional personal assistance services; and~~

~~(g) (f) assessment for rehabilitation technology~~ any auxiliary aid or service, including reader services, that a person with a disability may require under section 504 of the

Act (29 U.S.C. 794) or the Americans with Disabilities Act (42 U.S.C. 121010, et seq.) or regulations implementing those laws, in order for the person to participate in the vocational rehabilitation.

AUTH: Sec. 53-7-102 and 53-7-315, MCA

IMP: Sec. 53-7-102 and 53-7-105, 53-7-108 and 53-7-310,
MCA

37.30.407 VOCATIONAL REHABILITATION PROGRAM: CALCULATION DETERMINATION OF FINANCIAL RESPONSIBILITY NEED STANDARD

~~(1) An individual has financial need if the individual's A consumer is financially responsible for the payment for the cost of vocational rehabilitation services specified in the consumer's IPE to the extent the consumer's income and financial resources and any other income and resources available to the individual are less more than the standards relevant standard in the vocational rehabilitation program's table of income and financial resource standards specified in Montana Vocational Rehabilitation Policy O, "Montana Vocational Rehabilitation Financial Need Standard".~~

~~(2) For individuals whose income and resources are equal to or less than the levels identified in the vocational rehabilitation income and resources table, and for whom comparable benefits are not available otherwise.~~

~~(3) An individual must use unobligated personal income and resources in the purchase of those services listed in the individual's IWRP that must be purchased.~~

~~(2) A consumer's income and financial resources include, if married, that of the spouse and, if unemancipated, that of the parents or guardian.~~

~~(3) The financial responsibility determination, except as otherwise provided, is based on the consumer's next 12 months' projected income and financial resources.~~

~~(a) For a consumer who is employed seasonally, income is calculated based on income history.~~

~~(b) For a consumer who is self-employed, income does not include business expenses.~~

~~(4) The following assets are excluded as financial resources:~~

~~(a) the consumer's or the consumer's parents' home;~~

~~(b) a small business or farm owned by the consumer or the consumer's parents, in the case of a minor, if that business or farm is determined by the department to be the primary source of income for the consumer or the consumer's parents or is a major asset;~~

~~(c) the consumer's individual retirement accounts; and~~

~~(d) the consumer's trust funds established as a result of disability to assist with the present and future medical and independent living expenses of the consumer.~~

~~(4) (5) The department hereby adopts and incorporates by reference the vocational rehabilitation income and financial resource table, dated July 1, 1995, September 1, 2002, and published by the department as Policy O, "Montana Vocational~~

Rehabilitation Financial Need Standard", of the Montana Vocational Rehabilitation Policy Manual. A copy of the table policy may be obtained through the Department of Public Health and Human Services, Disability Services Division, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210.

AUTH: Sec. 53-7-102 and 53-7-315, MCA

IMP: Sec. 53-7-102, 53-7-105, 53-7-108 and 53-7-310, MCA

37.30.706 VOCATIONAL REHABILITATION PROGRAM: PHYSICAL AND MENTAL RESTORATION SERVICES (1) Physical and mental restoration services, as described in the IPE, may be provided to the consumer in preparing for, securing, retaining or regaining an employment outcome that is consistent with the strengths, resources, priorities, concerns abilities, capabilities, interests and informed choice of the consumer. may be provided to an applicant or client for purposes of evaluation or vocational rehabilitation.

~~(2) Physical and restoration services include:~~

~~(a) medical or corrective surgical treatment;~~

~~(b) physician and other medical practitioner services;~~

~~(c) diagnoses and treatment for mental or emotional disorders by a physician skilled in the diagnoses and treatment of such disorders or by a psychologist licensed in accordance with state law;~~

~~(d) dentistry;~~

~~(e) nursing services;~~

~~(f) inpatient or outpatient hospitalization and clinic services in connection with surgery or treatment;~~

~~(g) personal care services;~~

~~(h) drugs and supplies;~~

~~(i) prosthetic appliances and orthotic devices;~~

~~(j) physical therapy;~~

~~(k) occupational therapy;~~

~~(l) speech or hearing therapy;~~

~~(m) eyeglasses and visual services, including visual training and the examination and services necessary for the prescription and provision of eye glasses, contact lenses, microscopic lenses, telescopic lenses and other special visual aids, prescribed by a physician skilled in the diseases of the eye or by an optometrist;~~

~~(n) podiatry;~~

~~(o) therapeutic recreation;~~

~~(p) medically related social work services;~~

~~(q) special services for the treatment of a person suffering from end stage renal disease;~~

~~(r) rehabilitation engineering; and~~

~~(s) other medical or medically-related rehabilitation services.~~

(2) Physical and mental restoration services are limited to those services that are specified in and provided in accordance with the provisions of the Montana Vocational Rehabilitation Manual (MVR) Policy M, regarding scope of MVR services.

~~(3) The department may furnish short periods of medical care for acute conditions arising in the course of vocational rehabilitation, which, if not cared for, would constitute a hazard to the achievement of the IWRP, or the completion of the extended evaluation to determine rehabilitation potential.~~

~~(4) Physical and mental restoration services are available to an applicant if essential to the determination of an applicant's eligibility for vocational rehabilitation services.~~

~~(5) Physical and mental restoration services are available to a client if:~~

~~(a) the clinical status of the person's disability is stable or of slow progression. For a person under an extended evaluation plan, the condition need not be stable or of slow progression;~~

~~(b) that condition constitutes a substantial handicap to employment; and~~

~~(c) physical and mental restoration services may be reasonably expected to eliminate or substantially reduce the employment handicaps of the person.~~

~~(6) (3) Physical and mental restoration services do not include medical services and procedures of an experimental nature.~~

(4) The department hereby adopts and incorporates by this reference the vocational rehabilitation list of covered services dated September 1, 2002, and published by the department as Montana Vocational Rehabilitation Policy M, "Scope of Montana Vocational Rehabilitation Services", of the Montana Vocational Rehabilitation Policy Manual.

AUTH: Sec. 53-7-102, 53-7-302 and 53-7-315, MCA

IMP: Sec. 53-7-102, 53-7-103, 53-7-108, 53-7-303 and 53-7-310, MCA

37.30.730 VOCATIONAL REHABILITATION PROGRAM: FINANCIAL LIMITATIONS PROVIDER FEES (1) The provision of vocational rehabilitation services by the department is subject to the following financial limitations.

(a) Services subject to rates of payment are as follows:

(i) payment for physical and mental restoration services ~~listed in ARM 37.30.706 is limited to those rates specified in Montana Vocational Rehabilitation Policy R, "Fee Schedule". the vocational rehabilitation fee schedule manual. The department herein adopts and incorporates by this reference the vocational rehabilitation fee schedule manual published by the department;~~

(ii) payment for hospital care is limited to those rates provided in the medical assistance rates of Title 46 37, chapter 12 86, subchapters 5 and 12 of the Administrative Rules of Montana; and

(iii) payment for hospital care from a hospital in another state is at the rates as established by that state's vocational rehabilitation agency.

~~(b) Financial assistance for the following services is as follows:~~

~~(i) the amount of maintenance provided is determined by~~

~~the department based on the financial needs of the client and the availability of funding;~~

~~(ii) the amount of assistance for vocational items is determined by the department based on the financial needs of the client and the availability of funding;~~

~~(iii) the amount of assistance for financing self employment plans is determined by the department based on the availability of funding and a supportive feasibility plan done by a recognized business consultant; and~~

~~(iv) rates of payment for non-medical or medical related services which are not listed in the vocational rehabilitation fee schedule manual are the particular vendor's published fee schedule.~~

(2) The department hereby adopts and incorporates by this reference the vocational rehabilitation fee schedule, dated September 1, 2002, and published by the department as Montana Vocational Rehabilitation Policy R, "Fee Schedule", of the Montana Vocational Rehabilitation Policy Manual. A copy of the policy may be obtained through the Department of Public Health and Human Services, Disability Services Division, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210.

AUTH: Sec. 53-7-102, 53-7-203, 53-7-302 and 53-7-315, MCA

IMP: Sec. 53-7-102, 53-7-105, 53-7-108, 53-7-203, 53-7-302, 53-7-303, 53-7-306, 53-7-307 and 53-7-310, MCA

37.30.1002 STANDARDS FOR PROVIDERS: CERTIFICATION OF ENROLLMENT AS A PROVIDERS OF PROGRAMS OR SERVICES (1) An incorporated A provider of services for applicants or clients consumers of services provided through this chapter 30 of Title 37 of the Administrative Rules of Montana that is an incorporated corporation delivering a program of vocational rehabilitation, visual rehabilitation, extended employment services or independent living services in order to become enrolled with the department as qualified to be a provider must be certified as a qualified provider by the department. accredited by the appropriate accrediting body as specified on the following list:

~~(2) The department for the purposes of the certification process provided in this rule hereby adopts and incorporates by reference the following standards:~~

~~(a) for vocational rehabilitation facilities and similar providers, the standards of the commission of accreditation of rehabilitation facilities (CARF); and~~

~~(b) for providers serving persons with visual disabilities, the standards of the national accrediting council (NAC) or of CARF; and~~

~~(c) (b) for providers of independent living services, the standards and assurances as set forth in Title VII, section 725, of the federal Rehabilitation Act of 1973 (29 UC 796) of the national council on disability (NCD).~~

~~(3) (2) Copies of the standards adopted and incorporated by reference in this rule may be obtained as follows:~~

~~(a) The CARF standards may be obtained by temporary loan~~

from the department through the Department of Public Health and Human Services, Disability Services Division, P.O. Box 4210, Helena, MT 59604-4210 or by purchase from CARF, 4891 E. Grant Road, Tucson, AZ 85712.

~~(b) The NAC standards may be obtained by temporary loan from the department through the Department of Public Health and Human Services, Disability Services Division, P.O. Box 4210, Helena, MT 59604-4210 or by purchase from NAC, 15 E. 40th Street, Suite 1004, New York, NY 10016; and~~

~~(c) The independent living standards and assurances may be obtained through the Department of Public Health and Human Services, Disability Services Division, P.O. Box 4210, Helena, MT 59604-4210.~~

~~(4) (3)~~ A provider of services, that in accordance with ~~(1)~~ this rule must receive accreditation, may be provisionally certified enrolled by the department until the provider receives the appropriate accreditation. A provisional certification enrollment may not be for more than 18 months. A provider may not receive another provisional certification enrollment, consecutive with a prior provisional certification enrollment unless the department determines that the provisional recertification reenrollment is necessary due to matters of process relating to the accreditation and that the provider is making a good faith effort to become accredited.

~~(5) (4)~~ The department will certify may enroll a provider of services that is not accredited as provided in ~~(1)~~, if the provider this rule and that is necessary to the delivery of services to an applicant or client, if consumer, and the provider is certified or otherwise approved for the delivery of those services by a state or federal agency with which the department has a cooperative agreement concerning the coordinated delivery of services to a class of persons to which the person belongs.

~~(6) (5)~~ If certification enrollment is denied, the provider will be is notified of the reasons for such decision 30 days in advance of the date on which no more services the department will be purchased or grants awarded by the department cease to purchase services from the provider.

~~(7) (6)~~ The department will certify a provider of vocational rehabilitation or similar services provides for the enrollment of a provider upon receipt from the provider of records and reports attesting to its CARF or NAC accreditation, or in the case of independent living services, the yearly 704 federal independent living report. The tenure duration of the certification enrollment by the department may be up to ~~3~~ three years.

~~(8) (a)~~ The department, upon being apprised of any source of material change in the facility's functioning in terms of the standards or in terms of the failure of the facility to provide such records and reports as requested by the department, may review the facility's certification and may modify its certification decision. At the discretion of the department, such review may include an on site visit.

AUTH: Sec. 53-7-102, 53-7-203, 53-7-206, 53-7-302 and 53-7-315, MCA
IMP: Sec. 53-7-102, 53-7-103, 53-7-203, 53-7-302 and 53-7-303, MCA

37.30.1401 RIGHT TO FAIR HEARINGS (1) An applicant ~~for or client for~~ consumer of services provided through this chapter may appeal for a fair hearing from who is the subject of an adverse action of the department may pursue a fair hearing as permitted by and in accordance with this rule, the applicable rules in ARM Title 37, chapter 5 specified in ARM 37.5.125 and Montana Vocational Rehabilitation Policy E, "Counselor Determinations".

(2) An adverse action is any determination made by the department with respect to an applicant's or consumer's concerning eligibility for, placement into a particular category for purposes of order of selection, or termination from services, or with respect to the selection and delivery of services delivered to a consumer under this chapter.

(3) ~~The department will inform an applicant in writing at~~ At the time of application an applicant is informed of:

(a) ~~an applicant's and client's~~ the right of an applicant or consumer to a fair hearing;

(b) the procedure for requesting a fair hearing;

(c) the right to representation by legal counsel or others; and

(d) the availability of any advocacy and free legal representation- ; and

(e) the availability of mediation provided through the services of a qualified impartial mediator.

(4) The department ~~will~~ provides notice of an adverse action at least 10 days prior to the action unless the action relates to a change mandated by law or applied to the appealing party as a member of a class of ~~clients~~ consumers.

(5) ~~A fair hearing need not be granted or may be dismissed when:~~

~~(a) the matter is withdrawn;~~

~~(b) the appealing party fails to appear at hearing;~~

~~(c) the matter in controversy is a legal issue and a fair hearing is not necessary to develop a factual record for resolution of the matter;~~

~~(d) the benefit change at issue is mandated by statutory authority for a class of claimants or the department implements the benefit change for a class of claimants based on its discretionary authority;~~

~~(e) the appealing party fails to comply with the procedural requirements of this rule; or~~

~~(f) the department does not have jurisdiction over the subject matter or the appeal procedure.~~

~~(6) A request for a fair hearing must be made within 30 days of the adverse action.~~

~~(7) A fair hearing must be held within 45 days of the request for a fair hearing by the appealing party.~~

~~(8) A notice of an adverse action must contain the~~

following information:

- ~~(a) a statement of the adverse action;~~
- ~~(b) the reason for the adverse action;~~
- ~~(c) the specific regulations supporting the proposed action;~~
- ~~(d) an explanation of the claimant's right to a fair hearing; and~~
- ~~(e) an explanation of how a fair hearing may be requested.~~
- ~~(9) An administrative review of the adverse action may be conducted prior to the fair hearing if the department determines that it should be conducted. An appealing party may proceed to a fair hearing, if dissatisfied with the administrative review.~~
- ~~(10) A fair hearing must be conducted as follows:~~
 - ~~(a) by telephone conference unless one of the party's requests that the hearing be an in-person hearing and the hearing officer determines that the request is necessary;~~
 - ~~(b) at a reasonable time and date; and~~
 - ~~(c) at a reasonable location agreed to by the parties or designated by the hearing officer.~~
- ~~(11) Notice of the time and place of a fair hearing must be provided to the appealing party and the department at least 10 days in advance of the time of the hearing.~~
- ~~(12) A fair hearing must be conducted by an impartial person designated by the department to be a hearing officer in the matter at issue. The department's hearing office will provide the hearing officer, unless the parties agree to the appointment of an outside hearing officer.~~
- ~~(13) A hearing officer may be disqualified upon the filing of a timely and sufficient affidavit of personal bias or other disqualification by any party to the matter. The hearing officer may disqualify himself.~~
- ~~(14) A hearing officer may:~~
 - ~~(a) require by subpoena or other appropriate means the furnishing of such information, the attendance of witnesses, the taking of oral or written depositions, written interrogatories, and the production of items that may be necessary and proper for the purposes of the hearing;~~
 - ~~(b) require by subpoena or other appropriate means the appearance of witnesses;~~
 - ~~(c) order a pre-hearing conference in order to define the issues and other matters by consent of the parties;~~
 - ~~(d) grant continuances and other procedures recognized by the Montana rules of civil procedure;~~
 - ~~(e) control the hearing record and make evidentiary rulings in accord with the Montana rules of evidence;~~
 - ~~(f) administer oaths;~~
 - ~~(g) regulate the conduct of the hearing consistent with due process; and~~
 - ~~(h) provide for the protection of the confidentiality of client information.~~
- ~~(15) (5) An attorney or third party person may represent an appealing party. Representation must be shown by written consent. If an appealing party is unable to provide written consent, the hearing officer may make a written determination~~

that the representative for the appealing party is proper.

~~(16)~~ (6) The hearing officer will renders a written opinion, including findings and conclusions, within 30 days of final submission of the case.

~~(17)~~ (7) The hearing officer must reach a decision in the matter based on the provisions of the relevant state and federal statutory and rule authorities and of the state plan submitted by the vocational rehabilitation agency to and approved by the federal government.

~~(18)~~ Reasonable extensions of the periods of time in this rule, except for the time period in (6), may be granted by the hearing officer if requested by a party.

~~(19)~~ (8) Appeal from a decision of a hearing officer is available as provided in ARM ~~37.30.1403~~ 37.5.334. Appeals of determinations under this chapter may not be made to the board of public assistance.

(9) The department hereby adopts and incorporates by this reference the conciliation procedures, dated September 1, 2002, and published by the department as Policy E, "Counselor Determinations", of the Montana Vocational Rehabilitation Manual.

AUTH: Sec. 53-7-102, 53-7-203, 53-7-206, 53-7-302, 53-7-315 and 53-19-112, MCA

IMP: Sec. 53-7-102, 53-7-103, 53-7-105, 53-7-106, 53-7-203, 53-7-205, 53-7-206, 53-7-302, 53-7-303, 53-7-310, 53-7-314, 53-19-103, 53-19-106 and 53-19-112, MCA

37.30.1602 EXTENDED EMPLOYMENT SERVICES: OBJECTIVES

(1) The objectives of the extended employment program are:

(a) to facilitate the development of appropriate employment ~~positions~~ opportunities in community-based integrated job sites for persons with severe disabilities determined by the department to be in need of extended employment;

(b) to encourage community ~~placement~~ integration of ~~currently institutionalized~~ persons with disabilities by developing community-based, extended employment positions; and

(c) to provide opportunities for persons with ~~severe~~ significant disabilities who cannot be readily absorbed ~~in~~ through the competitive job market to participate in extended employment programs in Montana.

AUTH: Sec. 53-7-102, 53-7-203, 53-7-206 and 53-7-302, MCA

IMP: Sec. 53-7-203 and 53-7-206, MCA

37.30.1613 EXTENDED EMPLOYMENT SERVICES: ELIGIBILITY

(1) ~~The extended employment committee~~ department develops and maintains a prioritized waiting list from which ~~candidates~~ applicants for extended employment services are drawn ~~when as~~ funding allows.

(2) Applicants are selected to be served from the waiting list based on determination of eligibility date. The applicant available for services with the earliest determination date is offered the service. ~~vacancies occur. The prioritized list is~~

~~developed in accordance with the criteria described in (4).~~

~~(2) All persons referred must undergo an appropriate diagnostic study by the department.~~

~~(3) A person is eligible for the extended employment program if the person has:~~

~~(a) has a severe significant disability;~~

~~(b) has historically lacked the skills of independence and other skills so as not to have been competitively employed or, if employed, the employment has been interrupted or intermittent as a result of those disabilities; and~~

~~(c) has been determined by an evaluation of rehabilitation potential to have the ability or potential to engage in by the department to need the services of the extended employment program.~~

~~(4) Priority for placement in extended employment services will be as follows:~~

~~(a) first, to persons who are or have been institutionalized in state institutions and who are rehabilitated to the point of readiness for extended employment; then~~

~~(b) to persons who have not been institutionalized but who are adjudged to be candidates for institutionalization if not provided extended employment.~~

~~(5) The vocational rehabilitation program must be the first source of extended employment training opportunities to be considered for any person, age 16 or over, whose condition of physical, mental or emotional health substantially prevents the person from holding regular employment.~~

~~(a) Emotional health problems include the standard psychiatric classifications of psychoneuroses or psychosis. To qualify in these categories there must be substantial evidence that the maladaptive behavior has been of sufficiently long duration to constitute a pattern of behavior and is not merely a situational reaction to crisis. There must also be supporting evidence to indicate that the behavior has substantially prevented the person from holding regular employment.~~

~~(6) (4) Those persons eligible for comparable services for persons with developmental disabilities provided by the department must fully utilize those services before they may be considered for eligibility for extended employment services.~~

~~(7) Whenever the extended employment committee is unable to arrive at a decision concerning eligibility, the committee will submit the matter to the facilities specialist of the division with relevant materials for a final decision.~~

AUTH: Sec. 53-7-102, 53-7-203, 53-7-206, 53-7-302 and 53-7-315, MCA

IMP: Sec. 53-7-203, 53-7-205 and 53-7-206, MCA

37.31.401 INDEPENDENT LIVING REHABILITATION PROGRAM: ELIGIBILITY REQUIREMENTS (1) Independent living services may be provided to a person with severe disabilities if:

(a) the person's ability to function independently in the community, is limited by the severity of the disability; and

(b) the department determines that there is a reasonable expectation that the person will benefit from independent living services.

(2) Persons with severe disabilities not receiving other vocational and rehabilitation services provided by the department have priority for services provided under this program.

(3) The person's financial needs in relation to the costs of services will be determined as provided in ARM 37.30.401 through 37.30.411.

(4) "Person with a severe disability" means a person whose ability to function independently in family or community or whose ability to engage or continue in employment is so limited by the severity of a disability that independent living rehabilitation services are required in order to achieve a greater level of independence in functioning in family or community or engaging or continuing in employment.

AUTH: Sec. 53-7-102, 53-7-103, 53-7-315 and 53-19-112, MCA
IMP: Sec. 53-7-102, 53-7-103, 53-7-302, 53-19-103, 53-19-105 and 53-19-106, MCA

4. The rule 37.30.106 as proposed to be repealed is on page 37-6413 of the Administrative Rules of Montana.

AUTH: Sec. 53-7-102 and 53-7-315, MCA;
IMP: Sec. 53-7-108 and 53-7-310, MCA

The rule 37.30.301 as proposed to be repealed is on page 37-6449 of the Administrative Rules of Montana.

AUTH: Sec. 53-7-102 and 53-7-315, MCA
IMP: Sec. 53-7-102, 53-7-103, 53-7-105, 53-7-303, 53-7-306 and 53-7-315, MCA

The rule 37.30.310 as proposed to be repealed is on page 37-6461 of the Administrative Rules of Montana.

AUTH: Sec. 53-7-102, 53-7-302 and 53-7-315, MCA
IMP: Sec. 53-7-102, 53-7-103, 53-7-105, 53-7-108, 53-7-205, 53-7-303, 53-7-306 and 53-7-310, MCA

The rule 37.30.411 as proposed to be repealed is on page 37-6489 of the Administrative Rules of Montana.

AUTH: Sec. 53-7-102, 53-7-302 and 53-7-315, MCA
IMP: Sec. 53-7-102, 53-7-103, 53-7-105, 53-7-108, 53-7-303, 53-7-306 and 53-7-310, MCA

The rule 37.30.701 as proposed to be repealed is on page 37-6531 of the Administrative Rules of Montana.

AUTH: Sec. 53-7-102, 53-7-302 and 53-7-315, MCA
IMP: Sec. 53-7-102, 53-7-103, 53-7-108, 53-7-303 and 53-

7-310, MCA

The rule 37.30.702 as proposed to be repealed is on page 37-6532 of the Administrative Rules of Montana.

AUTH: Sec. 53-7-102, 53-7-302 and 53-7-315, MCA
IMP: Sec. 53-7-103, 53-7-105, 53-7-108, 53-7-303 and 53-7-310, MCA

The rule 37.30.705 as proposed to be repealed is on page 37-6535 of the Administrative Rules of Montana.

AUTH: Sec. 53-7-102, 53-7-302 and 53-7-315, MCA
IMP: Sec. 53-7-102, 53-7-103, 53-7-108, 53-7-303 and 53-7-310, MCA

The rules 37.30.711, 37.30.712 and 37.30.713 as proposed to be repealed are on pages 37-6539, 37-6540 and 37-6541 of the Administrative Rules of Montana.

AUTH: Sec. 53-7-102, 53-7-302 and 53-7-315, MCA
IMP: Sec. 53-7-102, 53-7-103, 53-7-108, 53-7-303 and 53-7-310, MCA

The rules 37.30.717, 37.30.718 and 37.30.719 as proposed to be repealed are on pages 37-6545 and 37-6546 of the Administrative Rules of Montana.

AUTH: Sec. 53-7-102, 53-7-302 and 53-7-315, MCA
IMP: Sec. 53-7-102, 53-7-103, 53-7-108, 53-7-303 and 53-7-310, MCA

The rules 37.30.723, 37.30.724 and 37.30.725 as proposed to be repealed are on pages 37-6549 and 37-6550 of the Administrative Rules of Montana.

AUTH: Sec. 53-7-102, 53-7-302 and 53-7-315, MCA
IMP: Sec. 53-7-102, 53-7-103, 53-7-108, 53-7-303 and 53-7-310, MCA

The rules 37.30.734, 37.30.735 and 37.30.736 as proposed to be repealed are on pages 37-6557 and 37-6558 of the Administrative Rules of Montana.

AUTH: Sec. 53-7-102, 53-7-302 and 53-7-315, MCA
IMP: Sec. 53-7-102, 53-7-103, 53-7-108, 53-7-303 and 53-7-310, MCA

The rule 37.30.805 as proposed to be repealed is on page 37-6573 of the Administrative Rules of Montana.

AUTH: Sec. 53-7-102, 53-7-203 and 53-7-302, MCA
IMP: Sec. 53-7-203, MCA

The rule 37.30.1403 as proposed to be repealed is on page 37-6684 of the Administrative Rules of Montana.

AUTH: Sec. 53-7-102, 53-7-206, 53-7-302, 53-7-315 and 53-19-112, MCA

IMP: Sec. 53-7-103, 53-7-105, 53-7-106, 53-7-203, 53-7-205, 53-7-206, 53-7-302, 53-7-303, 53-7-310, 53-7-314, 53-19-103, 53-19-106 and 53-19-112, MCA

The rule 37.30.1603 as proposed to be repealed is on page 37-6701 of the Administrative Rules of Montana.

AUTH: Sec. 53-7-102, 53-7-203, 53-7-206 and 53-7-302, MCA

IMP: Sec. 53-7-203, 53-7-205 and 53-7-206, MCA

The rule 37.30.1608 as proposed to be repealed is on page 37-6705 of the Administrative Rules of Montana.

AUTH: Sec. 53-7-102, 53-7-203, 53-7-206 and 53-7-302, MCA

IMP: Sec. 53-7-203, 53-7-205 and 53-7-206, MCA

The rule 37.30.1612 as proposed to be repealed is on page 37-6709 of the Administrative Rules of Montana.

AUTH: Sec. 53-7-102, 53-7-203, 53-7-206, 53-7-302 and 53-7-315, MCA

IMP: Sec. 53-7-203 and 53-7-206, MCA

5. The vocational rehabilitation program is a federally authorized program intended to provide services directed at bringing persons into productive employment. This set of proposed rules and amendments is for the purposes of generally consolidating and thereby reducing volume of texts for the legal authorities governing the vocational rehabilitation program and for bringing the rules into conformity with the governing federal authorities for the program.

The consolidation and reduction is principally to be achieved via the broad adoption through incorporation by reference for state rule purposes of the primary federal regulations governing the program.

It has been several years since the current state rule set was first adopted and even some years since the last revisions through amendment. Consequently, the rules have in many respects become quite dated in relation to substantive federal requirements, current administrative practices and even nomenclature. The proposed incorporation by reference of the federal regulations, the proposed revisions for many of the various existing provisions, and the proposed repeal of numerous provisions are all intended to bring currency to the rule set.

Proposed Rule I

Incorporation Generally

Proposed Rule I would replace numerous existing rules and rule provisions that are proposed for repeal and deletion in this rule notice. The purpose of this approach is to significantly consolidate the governing legal authorities for the vocational rehabilitation program as among three sources: the governing federal regulations, the Montana Vocational Rehabilitation Policy Manual, and the state rules. This approach will also maintain the integrity of the pertinent governing authorities by using the original governing authorities without further versions that may not accurately reflect the original authorities. In addition, many of the rules and provisions that are proposed for deletion contain dated material that is no longer applicable to the administration of the program.

To a large extent, the federal legal authorities governing this program, in particular the federal regulations, dictate in detail the administration of the program and the delivery of services by the various participating states. The federal regulations are fairly voluminous. Consequently, the department has determined that for purposes of establishing governing state legal authorities with respect to the program it would be most appropriate and efficient to largely adopt through incorporation by reference the pertinent federal regulations. The Montana Vocational Rehabilitation Policy Manual is already in great measure a reiteration of the federal authorities.

While the Montana Vocational Rehabilitation Policy Manual is largely a direct reflection of current federal regulations, there are substantive portions of the manual which do not have a direct counterpart in the federal regulation. Consequently, the Department has determined that for purposes of establishing governing state legal authorities with respect to the program it would be most appropriate and efficient to adopt through incorporation by reference the substantive material appearing in the manual that is not otherwise detailed in the federal regulations being adopted also by incorporation.

Incorporation Of Federal Regulations

The federal regulations proposed for incorporation by reference cover many aspects of administration for the vocational rehabilitation program and the delivery of vocational rehabilitation services. Those aspects include: eligibility determinations and criteria; order of selection; confidential information; planning for services; scope of services; informed choice; comparable services and benefits; annual reviews in extended employment; closure of cases; information and assurances for state plan supplements; requirements for transition to extended services; and review of counselor decisions.

These various federal regulations, proposed for incorporation by reference, are binding upon the states in the administration of the vocational rehabilitation program and the delivery of program services. The states, when agreeing to participate in this federally authorized program, are then bound to comply with the requirements of these regulations. Failure to adopt the substantive provisions of these regulations and implement the program in accordance with federal direction would result in the termination by the federal government of the agreement with the State that provides for the conduct of the state program. This would greatly reduce opportunities for those persons who would be eligible for the program.

Incorporation Of Certain Policies From The Montana Vocational Rehabilitation Policy Manual

The Montana Vocational Rehabilitation Policy Manual is a compilation of the policies adopted by the state vocational rehabilitation program to provide to program staff, consumers, and providers detailed guidance in the administration and delivery of services. The manual is for the convenience of these parties on a day to day basis and is the common reference for all. It is formatted to generally provide ease of reference and to distill requirements to succinct statements. The contents of the manual are generally drawn from the federal regulations with respect to substantive requirements whether procedural or criteria.

While this proposed rule incorporates by reference the pertinent federal regulations for purposes of legitimizing extensive portions of the administration of the program and the delivery of services, there are certain policy statements in the policy manual that are not reiterations of the federal requirements but are additional requirements. Those policies are proposed for incorporation by reference since they further govern the administration of the program and the delivery of program services.

MVR Policy B: Rates of Payment

This policy, a reiteration of the service payment requirements appearing in 34 CFR 361.50, Payment for Services, and ARM 37.30.730, contains a further provision governing the selection of the actual goods and services that a consumer is to receive. The provision provides for consideration of both informed consumer choice and cost effectiveness in making choices between comparable goods or services. This provision effectuates criteria for appropriateness and cost effectiveness. Without this particular provision, the counselors and their consumers would lack direction by which to make informed decisions with respect to choice resulting potentially in ill-suited items of services for the consumers and in increased expenditures for the State.

MVR Policy C1: Personal Safety

There have been increased threats to the safety and lives of vocational rehabilitation staff in recent years from angry consumers, exhibiting their anger through threats and harmful actions. The threat of violence is unacceptable in a counseling relationship. This policy defines a protocol for a consumer to return to an agency service relationship after making a serious threat. Not having a policy to define the process to govern the return of a consumer to services potentially leaves both vocational rehabilitation staff and consumers at risk of harm.

MVR Policy E: Counselor Determinations

This policy is a reiteration of federal and state authorities with respect to administrative appeals of IPE decisions, specifically ARM 37.5.125, 37.30.1401, and 34 CFR 361.57, Review of Determinations Made by Designated State Unit Personnel. The policy summarizes the cogent points of these authorities. This policy contains a further provision that provides for a conciliation process prior to the advent of the formal appeal process. The conciliation process, while a federal requirement, is detailed in the policy. The policy further removes an additional level of administrative review following the decision of a hearing officer as to the merits of the consumer's appeal. This further review, while generally provided in departmental administrative appeal process for consumers, is optional under the pertinent federal authority. In addition, the pertinent federal authority is so prescriptive in relation to the conduct of the further appeal that to require it would be of little value to either the consumer or the department. The consumer's recourse after entry of a hearing officer's fair hearing decision is to petition district court directly. Foregoing the implementation of this particular administrative appeal stage allows the consumer to move through the administrative due process and access the judicial system in a more timely manner without needless repetitive considerations of the matter.

MVR Policy M1: Self-employment

The federal regulations are incomplete in terms of describing a useful structure for the administration of a self-employment or microbusiness enterprise. This policy defines the minimal levels of planning and collaboration that must accompany the funding of such an enterprise. This policy has the effect of establishing reasonable limitations on the level of funding that could be invested toward a self-employment or business venture. This policy does not however place an absolute limit on the agency's funding. Without adoption of this policy, consumers are likely to be dissatisfied with the process for launching their ventures and incur greater risk of failure and debt incurment. The State is more likely to experience significant costs without favorable outcomes for the consumer.

MVR Policy W: Core Requirements of IPE

This policy, a reiteration of the individualized plan for employment requirements appearing in 34 CFR 361.45 (d)(1)-(5), Development of the Individualized Plan for Employment, contains a further requirement that the counselor must provide a rationale for delays in the development of the IPE that extend beyond six months from the determination of eligibility. That requirement does not appear in the federal regulation. The implementation of this provision was recommended by the Montana state legislative auditors as a measure that would foster the more timely development of IPEs. The legislative auditors identified timely development as a matter that needed to be addressed in the administration of the program. Timely development furthers the interest of the consumer in realizing the benefits of the program and the interest of the State in the efficient use of the program resources. Failure to adopt this change would leave unresolved those cases that are experiencing delay in development and lead to further attention from the legislative auditor to this matter.

MVR Policy X: Ongoing IPE Services

This policy, a reiteration of individualized plan for employment requirements appearing in 34 CFR 361.45 (d)(5)-(7), Development of the Individualized Plan for Employment, contains a further provision that explicitly provides for the delivery of services prior to obtaining the necessary signatures of the consumer for IPE and other pertinent case documents. This provision allows for the provision of an immediately necessary service when, due to the extensive geography of the State and the times involved in mail deliveries, a consumer would not likely have immediate access to the service while the consumer's signatures were obtained. This provision is of great benefit to consumers in that no harm results from authorization delays when a service is urgently needed. Lack of this provision would result in delays for persons in accessing and receiving services that may be critical to physical and mental well being and the development of employment opportunities under the aegis of the program.

Definitions

MVR Policy ZGD08: Emancipated Adult

MVR Policy ZGD16: Individual With A Most Significant Disability

These definitions are necessary adjuncts to the implementation of certain aspects of the vocational rehabilitation program.

The definition of "emancipated adult" facilitates counselor determinations with respect to service provision for persons who are under 18 years of age but for whom the provision of services is appropriate due to their independent status and service needs. Without this definition counselors would have to make ad

hoc decisions as to emancipation and consequently, there would be the possibility for unacceptable variations as to determinations among the counselors.

The definition of "individual with a most significant disability" is an essential definition in the exercise of imposing order of selection upon persons eligible for vocational rehabilitation services. This definition is the predicate for selection of the top categories of persons most deserving of service provision. Without this definition, the imposition of order of selection, the program would likely exceed its permissible appropriation and have to undertake measures that would significantly reduce services to all portions of the service population. In such a circumstance particular harm would befall those persons with extensive disabling conditions. The imposition of priority for services conserves programmatic resources for the persons most in need of services.

Proposed Amendments To ARM 37.5.125

VOCATIONAL REHABILITATION AND VISUAL SERVICES PROGRAMS:
APPLICABLE HEARING PROCEDURES

The amendments proposed to this rule would conform the procedural process for purposes of an administrative appeal by a consumer with the pertinent federal requirements governing the availability of an appeals process. The amendments, so as to conform with the federal requirements, would remove referenced provisions that are inapplicable to the process as currently implemented. Consequently, the failure to make such changes would leave in place a dated misleading rule due to inappropriate cross references.

Proposed Amendments To ARM 37.30.101

DEFINITIONS

The proposed amendments to the rule are for various purposes. Definitions are proposed for deletion either because they are obsolete or because they appear in the federal regulations that are proposed in this notice for adoption by incorporation by reference. Several definitions are being amended to conform nomenclature with current usage or to account for substantive changes in definition. Definitions, proposed for inclusion, are "financial resources", "income", "individualized plan for employment", and "Montana vocational rehabilitation program".

The proposed definitions of "income" and "financial resources" would provide essential criteria for determinations of eligibility and capabilities for consumers to contribute toward payment of the costs of services. Without the implementation of these definitions the program would lack consistency in eligibility determinations and would not be able to effectively manage resources of the program efficiently for those eligible persons whose financial status exhibits the greater need.

The proposed definition of "individualized plan for employment" is necessary to conform the terminology for this essential core feature of service delivery with that required by the governing federal regulations. Failure to so conform would seriously jeopardize the State's participation in the vocational rehabilitation program as a whole.

The proposed definition of "Montana vocational rehabilitation program" is necessary predicate for the administration of the program. The absence of such a definition leaves the program vulnerable to being misconstrued.

Proposed Amendments To ARM 37.30.111
ORDER OF SELECTION

This rule provides the criteria for implementation of the order of selection. The order of selection is a designation process for prioritizing among four categories of persons eligible for services those persons who are deemed to be most in need of services and therefore are to receive services on an immediate basis. The other categories receive services relative to the availability of resources to apply to cost of their services. Montana is required to provide an order of selection in the event the vocational rehabilitation program cannot serve all eligible persons. The proposed changes provide a set of levels for the order of selection that conform best, given the services milieu in Montana, with the governing federal provisions. Failure to adopt an appropriate order of selection based on priorities relative to the governing federal criteria would place the State at risk of failing to be in compliance with federal direction and would also potentially result in persons most in need of services being inadequately served.

Proposed Amendments To ARM 37.30.305
VOCATIONAL REHABILITATION PROGRAM: CLIENT ELIGIBILITY

The proposed amendments to this rule conform eligibility with the governing federal criteria for eligibility and implement, in accordance with federal governing authorities, presumptive eligibility for vocational rehabilitation services for persons eligible for social security old age, survivors and disability insurance (OASDI) or supplemental security income (SSI) benefits under Titles II and XVI of the Social Security Act. Failure to implement these changes would jeopardize the continued participation of the State in the federal program of vocational rehabilitation services.

Proposed Amendments To ARM 37.30.405
VOCATIONAL REHABILITATION PROGRAM: DETERMINATION AND USE OF FINANCIAL NEED

The proposed amendments to this rule would serve to more precisely define the responsibilities as between the State and the consumer for the financial costs being incurred in support

of the consumer's service milieu. The failure to implement these changes would leave the Department potentially vulnerable to greater costs incurred in unnecessary support of vocational rehabilitation.

Proposed Amendments To ARM 37.30.407

VOCATIONAL REHABILITATION PROGRAM: CALCULATION OF FINANCIAL NEED STANDARD

The proposed amendments would incorporate current provisions from ARM 37.30.411, which is proposed for repeal, and incorporate by reference the income and financial table in the vocational rehabilitation policy manual. These amendments would consolidate various provisions pertaining to the responsibilities of a consumer to financially participate in the consumer's service plan. Not proceeding with these proposed amendments would leave the responsibility of the consumer for financial participation unclear due to the variation between the dated rule material and the other federal and state authorities.

Proposed Amendments To ARM 37.30.706

PHYSICAL AND MENTAL RESTORATION SERVICES

This proposed amendment would remove certain provisions that are no longer pertinent and would incorporate by reference the listing of available physical and mental restoration services as adopted in the vocational rehabilitation policy manual. This reduction in verbiage serves to facilitate determinations as to what services are available and appropriate for a consumer and explicitly references the currently applied listing of services. Without these amendments, there would remain dated material that would potentially confuse service delivery.

Proposed Amendments To ARM 37.30.730

VOCATIONAL REHABILITATION PROGRAM: FINANCIAL LIMITATIONS

The proposed amendments to this rule remove dated provisions that are no longer relevant and would incorporate by reference the provider fee schedule in the vocational rehabilitation policy manual. The amendments would remove irrelevant provisions and would facilitate provider compensation by explicitly referencing the currently applied provider fee schedule.

Proposed Amendment To ARM 37.31.401

INDEPENDENT LIVING REHABILITATION PROGRAM: ELIGIBILITY REQUIREMENTS

This proposed amendment would place the definition of "persons with a severe disability" appropriately into the context of the rules pertaining to the development of independent living to which the definition is pertinent. Failure to implement this change would leave the State without an appropriate definition for implementation of independent living services.

Proposed Repeal Of Rules 37.30.106, 37.30.301, 37.30.310, 37.30.411, 37.30.701, 37.30.702, 37.30.705, 37.30.711, 37.30.712, 37.30.713, 37.30.717, 37.30.718, 37.30.719, 37.30.723, 37.30.724, 37.30.725, 37.30.734, 37.30.735, 37.30.736, 37.30.805, 37.30.1403, 37.30.1603, 37.30.1608, and 37.30.1612

The rules are proposed for repeal in that the provisions generally were: 1) dated and inapplicable due to changes in the governing federal authorities and programmatic administration; 2) explicit in the governing federal authorities or the vocational rehabilitation policy manual and did not therefore need to be redundantly stated. Failure to not repeal these particular rules will leave in place inapplicable and redundant provisions that would potentially confuse many aspects of service delivery.

6. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on October 31, 2002. Data, views or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

7. The Office of Legal Affairs, Department of Public Health and Human Services has been designated to preside over and conduct the hearing.

Dawn Sliva
Rule Reviewer

Russ Cater for
Director, Public Health and
Human Services

Certified to the Secretary of State September 16, 2002.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the) NOTICE OF TRANSFER AND
transfer and amendment of) AMENDMENT
ARM Title 8, Chapter 94)
pertaining to the Single)
Audit Act)

TO: All Concerned Persons

1. On August 15, 2002, the Department of Administration published notice of the transfer and amendment of ARM Title 8, Chapter 94 concerning the Single Audit Act, at page 2045 of the 2002 Montana Administrative Register, Issue Number 15.

2. The agency has amended and transferred the following rules as proposed:

<u>OLD</u>	<u>NEW</u>	
8.94.4104	2.4.404	PENALTY FOR FAILING TO PAY FILING FEE WITHIN 60 DAYS OF DUE DATE
8.94.4105	2.4.405	AUDIT AND AUDIT REPORTING STANDARDS
8.94.4106	2.4.406	ROSTER OF INDEPENDENT AUDITORS AUTHORIZED TO CONDUCT AUDITS OF LOCAL GOVERNMENT ENTITIES
8.94.4110	2.4.410	REVIEW OF FINANCIAL STATEMENTS
8.94.4111	2.4.411	INCORPORATION BY REFERENCE OF VARIOUS STANDARDS, ACCOUNTING POLICIES, AND FEDERAL LAWS AND REGULATIONS

3. The department has transferred the following rules as proposed:

<u>OLD</u>	<u>NEW</u>	
8.94.4101	2.4.401	ACCOUNTING AND FINANCIAL REPORTING STANDARDS
8.94.4102	2.4.402	REPORT FILING FEE
8.94.4103	2.4.403	PENALTY FOR FAILING TO FILE ANNUAL FINANCIAL REPORT WITHIN PRESCRIBED TIME WITHOUT APPROVED EXTENSION
8.94.4107	2.4.407	CRITERIA FOR THE SELECTION OF THE INDEPENDENT AUDITOR
8.94.4108	2.4.408	AUDIT CONTRACTS
8.94.4109	2.4.409	ACTIONS BY LOCAL GOVERNMENT ENTITY GOVERNING BODIES TO RESOLVE OR CORRECT AUDIT FINDINGS AND PENALTY FOR FAILURE TO DO SO

4. No comments or testimony were received.

By: /s/ SCOTT DARKENWALD
SCOTT DARKENWALD, Director
Department of Administration

/s/ DAL SMILIE
DAL SMILIE, Rule Reviewer

Certified to the Secretary of State September 16, 2002.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the) NOTICE OF AMENDMENT
amendment of ARM 2.5.120,)
2.5.201, 2.5.402, 2.5.408,)
2.5.502 and 2.5.604)
concerning state procurement)
of supplies and services)

TO: All Concerned Persons

1. On August 15, 2002, the Department of Administration published notice of the proposed amendment of ARM 2.5.120, 2.5.201, 2.5.402, 2.5.408, 2.5.502 and 2.5.604 concerning state procurement of supplies and services, at page 2037 of the 2002 Montana Administrative Register, Issue Number 15.

2. The agency has amended ARM 2.5.120, 2.5.201, 2.5.402, 2.5.408, 2.5.502 and 2.5.604 exactly as proposed.

3. No comments or testimony were received.

By: /s/ SCOTT DARKENWALD
SCOTT DARKENWALD, Director
Department of Administration

/s/ DAL SMILIE
DAL SMILIE, Rule Reviewer

Certified to the Secretary of State September 16, 2002.

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the adoption)
of new rules relating to a) CORRECTED NOTICE
Deferred Retirement Option Plan) OF ADOPTION
(DROP) for members of the)
Municipal Police Officers')
Retirement System)

TO: All Concerned Persons

1. On July 11, 2002, the Public Employees' Retirement Board published a notice at page 1891 of the 2002 Montana Administrative Register, Issue Number 13, of the adoption of new rules relating to a Deferred Retirement Option Plan (DROP) for members of the Municipal Police Officers' Retirement system administered by the Public Employees' Retirement Board.

2. The reason for the correction to the notice is to make the rule consistent with statute. The adopted RULE I (ARM 2.43.1101) definition for the "DROP" states it is the deferred retirement option program and in § 19-9-1202, MCA, the definition states it is the deferred retirement option plan. The rule inadvertently uses the word "program" rather than "plan." The corrected rule amendment reads as follows:

RULE I DEFINITIONS (1) "DROP" means the deferred retirement option ~~program~~ plan.
(2) and (3) same as proposed.

3. Replacement pages for the corrected notice of adoption will be submitted to the Secretary of State on September 30, 2002.

/s/ Terry Teichrow
President
Public Employees' Retirement Board

/s/ Kelly Jenkins
Kelly Jenkins, General Counsel and
Rule Reviewer

/s/ Dal Smilie
Dal Smilie, Chief Legal Counsel and
Rule Reviewer

Certified to the Secretary of State on September 16, 2002.

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the adoption)
of new rule I pertaining to)
Family Law Orders for the Public) NOTICE OF ADOPTION
Employees' Retirement System)
Defined Contribution Retirement)
Plan administered by the Public)
Employees' Retirement Board)

TO: All Concerned Persons

1. On August 15, 2002, the Public Employees' Retirement Board published notice of proposed adoption of new Rule I pertaining to Family Law Orders for the Public Employees' Retirement System Defined Contribution Retirement Plan administered by the Public Employees' Retirement Board at page 2052 of the 2002 Montana Administrative Register, Issue Number 15.

2. The Board has adopted new RULE I (ARM 2.43.1703) exactly as proposed.

3. No comments or testimony were received.

/s/ Terry Teichrow
Terry Teichrow, President
Public Employees' Retirement Board

/s/ Kelly Jenkins
Kelly Jenkins, General Counsel and
Rule Reviewer

/s/ Dal Smilie
Dal Smilie, Chief Legal Counsel and
Rule Reviewer

Certified to the Secretary of State on September 16, 2002.

BEFORE THE FISH, WILDLIFE AND PARKS COMMISSION
OF THE STATE OF MONTANA

In the matter of the)	
adoption of a new rule)	
allowing successful moose,)	
sheep or goat applicants to)	
annul and return the license)	
if military or emergency duty)	
does not allow use of the)	NOTICE OF ADOPTION
license and the amendment of)	AND AMENDMENT
ARM 12.3.135, providing a)	
bonus point exception for)	
military or emergency)	
personnel in combat or)	
emergency situations)	

TO: All Concerned Persons

1. On July 11, 2002, the Fish, Wildlife and Parks Commission (commission) published notice of the proposed adoption of new rule I (ARM 12.3.134) allowing successful moose, sheep or goat license applicants to annul and return their licenses if the applicants are in the military or are emergency personnel and cannot use the license because of combat deployment or duty at a major emergency, and the proposed amendment to ARM 12.3.135 to allow military or emergency personnel who draw a special permit/license but are called to serve in combat or emergency situations and cannot use the permit/license to retain their bonus points at page 1835 of the 2002 Montana Administrative Register, Issue Number 13.

2. The commission has adopted new rule I (ARM 12.3.134) as proposed.

3. The commission has amended ARM 12.3.135 as proposed.

4. No comments or testimony were received.

By: /s/ Dan Walker
Dan Walker
Commission Chairman

By: /s/ Robert N. Lane
Robert N. Lane
Rule Reviewer

Certified to the Secretary of State September 16, 2002

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the) NOTICE OF AMENDMENT
amendment of ARM 24.21.414)
by the adoption of)
wage rates for certain)
apprenticeship programs)

TO: All Concerned Persons

1. On May 16, 2002, the Department of Labor and Industry published a notice of proposed amendment of the above-stated rule at page 1400, 2002 Montana Administrative Register, issue number 9.

2. A public hearing was held in Helena on June 7, 2002. Members of the public attended the hearing and offered oral comments.

3. The Department has amended the rule as proposed.

4. The Department has thoroughly considered the comments received on the proposed amendments. The following is a summary of the comments received, along with the Department's response to those comments:

Comment 1: Don Herzog, Business Agent for IBEW 532 opposed the wage rates for electricians in the Bozeman and Gallatin County area as being too low.

Response 1: The electrician wage rates calculations were analyzed and the Department has determined the correct methodology was used in the calculations.

/s/ KEVIN BRAUN
Kevin Braun
Rule Reviewer

/s/ WENDY J. KEATING
Wendy J. Keating, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: September 16, 2002.

BEFORE THE BUILDING CODES BUREAU
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the) NOTICE OF
adoption of new rules I) ADOPTION
through VIII, pertaining to)
building codes)

TO: All Concerned Persons

1. On June 13, 2002, the Department of Labor and Industry published notice of the proposed adoption of rules related to building codes matters at page 1631 of the 2002 Montana Administrative Register, Issue Number 11.

2. A public hearing was held in Helena on July 23, 2002. There were 18 comments received during the comment period.

3. The Department has adopted the following new rules exactly as proposed:

NEW RULE I (24.301.131) INCORPORATION BY REFERENCE OF INTERNATIONAL BUILDING CODE

NEW RULE II (24.301.134) OPTIONAL APPENDIX CHAPTERS FOR LOCAL GOVERNMENT ADOPTION

NEW RULE III (24.301.138) CALCULATION OF FEES

NEW RULE VI (24.301.151) EFFECTIVE DATE OF INTERNATIONAL BUILDING CODE

NEW RULE VIII (24.301.158) EFFECTIVE DATE OF INTERNATIONAL RESIDENTIAL CODE

4. The Department has adopted the following rules with the following changes, stricken matter interlined, new matter underlined:

NEW RULE IV (24.301.142) MODIFICATIONS TO THE INTERNATIONAL BUILDING CODE APPLICABLE ONLY TO THE DEPARTMENT'S CODE ENFORCEMENT PROGRAM (1) through (7)(a)(iv) same as proposed.

(v) a statement that the described portion of the building has been inspected for compliance and ~~complies~~ with the state building code for the group and division of occupancy and the use for which the proposed occupancy is classified;

(vi) through (9) same as proposed.

AUTH: 50-60-203, MCA

IMP: 50-60-107, 50-60-108, 50-60-109, 50-60-203 and 50-60-212, MCA

NEW RULE V (24.301.146) MODIFICATIONS TO THE INTERNATIONAL BUILDING CODE APPLICABLE TO BOTH THE DEPARTMENT'S AND LOCAL GOVERNMENT CODE ENFORCEMENT PROGRAMS

(1) through (13)(c) same as proposed.

(d) Appendix Chapter C, subsection C104.1 is amended by addition of exception 3: "Exit doors for riding arenas shall not be less than 3 feet wide by 6 feet 8 inches high."

(14) through (49) same as proposed.

AUTH: 50-60-203, MCA

IMP: 50-60-101, 50-60-102, 50-60-104, 50-60-201, 50-60-203 and 50-60-205, MCA

NEW RULE VII (24.301.154) INCORPORATION BY REFERENCE OF INTERNATIONAL RESIDENTIAL CODE (1) through (5) same as proposed.

(6) IRC Subsection R315.1 Handrails, is amended to read as follows: "Handrails having minimum and maximum heights of 34 and 38 inches (864 mm and 965 mm), respectively, measured vertically from the nosing of the treads, shall be provided on at least one side of stairways. All required handrails shall be continuous the full length of the stairs with three or more risers from a point directly above the top riser of a flight to a point directly above the lowest riser of the flight. Ends shall be returned or shall terminate in newel posts or safety terminals. Handrails adjacent to a wall shall have a space of not less than 1.5 inches (38 mm) between the wall and the handrail.

"Exceptions:

1. Handrails shall be permitted to be interrupted by a newel or post at a turn.

2. The use of a volute, turnout or starting easing shall be allowed over the lowest tread."

(6) through (9) same as proposed but are renumbered (7) through (10).

AUTH: 50-60-203, MCA

IMP: 50-60-102, 50-60-201 and 50-60-203, MCA

5. The Department has thoroughly considered all the comments received. Those comments and the Department's responses are as follows:

Comment No. 1: A general comment was received requesting the Department maintain the prescriptive designs for 18" and 24" alternative braced wall panels for residential garages when the IRC is adopted.

Response No. 1: The Department will continue to support the use of the prescriptive designs and will continue to distribute the designs to those persons wishing to utilize

them. However, the alternative braced wall panels for use in residential garages are not incorporated in the current administrative rules for the CABO 1 & 2 Family Dwelling Code and, therefore, will not be included in the administrative rules adopting the IBC/IRC.

Comment No. 2: A comment was received requesting that the Department maintain the handrail requirement criteria presently in the CABO 1 & 2 Family Dwelling Code, which requires a handrail for stairs with three or more risers, as opposed to the IRC requirement for a handrail on stairs with two or more risers.

Response No. 2: The comment is well taken and appears to be a reasonable amendment to the IRC. NEW RULE VII (ARM 24.301.154) is amended accordingly.

Comment No. 3: A comment was received suggesting an additional statement be added to the end of NEW RULE V (ARM 24.301.146), subsection (2) to provide for complete coverage and correlation of the technical issues in the International Codes. The suggested change would read: "Except where the referenced replacement code section or subsection does not have corresponding provisions."

Response No. 3: The issue of correlating and referencing codes, which do not contain specific technical requirements in the referenced sections or subsections, was considered at length by the Building Codes Council, upon the request of the Department. The Council's recommendation was to include the specific requirements in the administrative rules so the construction industry would not have to purchase a complete set of reference books. The Department has concluded that it is appropriate to follow the recommendation of the Building Codes Council, a Governor appointed, public-private partnership of various building codes officials from local governments, the state, and private sector contractors.

Comment No. 4: A comment was received that NEW RULE V (ARM 24.301.146) should be eliminated. The comment stated that all construction documents should bear the seal of a design professional.

Response No. 4: The Department's jurisdiction encompasses the rural areas where a properly credentialed design professional is not always readily available. The rule allows the Department to assist smaller rural communities and school districts with minor projects by requiring a design professional only as it deems reasonably necessary. The Department concludes that requiring the seal of a design professional is not necessary for the public health and safety for minor projects, and that such a requirement would increase project costs in a manner that is not commensurate with the increased reliability of the safety of the design. The rule

allows municipalities to make that balancing test and decide whether to require a design professional on these projects in accordance with the state building code.

Comment No. 5: Comments were received in opposition to the proposed implementation of the effective date of the IBC and IRC. The comments suggested elimination of the one year period for acceptance of building designs based on either the Uniform Codes or International Codes. Instead, a one year period was suggested for the State only, with the municipalities having an immediate effective date upon passage of their requisite ordinances.

Response No. 5: The Building Codes Council considered at length the most appropriate implementation date for the IBC/IRC. The proposed one year period for acceptance of building designs based on either code was considered the most reasonable alternative. The Council concluded the change to new codes would require a longer transition period to accommodate anticipated education and training needs. The Department concurs with the Council's recommendation.

Comment No. 6: A comment was received suggesting clarification language in NEW RULE V (ARM 24.301.146), subsection (13)(d), regarding exit doors from riding arenas. The suggested change would read: "Exit doors for riding arenas shall not be less than 3 feet wide by six feet eight inches high."

Response No. 6: The comment is well taken and the rule has been modified to include the clarification.

Comment No. 7: A general comment was received questioning the adoption of the 2000 editions of the IBC and IRC in the middle of 2002 when the 2003 editions of the IBC and IRC will be published in 2003.

Response No. 7: The preparation of the proposed administrative rules to adopt the IBC/IRC began in 1999 and focused upon the 2000 editions of the IBC/IRC. The Building Codes Council has considered and concurred with adoption of the 2000 editions, and the public has also reviewed and commented on the proposed adoption of only the 2000 editions. Because of the extensive efforts put forth by all concerned parties toward adoption of the 2000 editions, the Department has concluded the proposed adoption of the 2000 editions should not be postponed to wait for the 2003 editions to be published. To delay adoption would negate all the work done to date relating to the 2000 editions, and would likely require repetition of that review process to adequately consider the newer editions of the IBC and IRC. The Department notes that there will usually be a lag between the publication of a model code and the final adoption of that code as modified to meet specific issues present in Montana.

Comment No. 8: A comment was received questioning the adoption of the IRC based upon a belief that the State does not use the residential code at all, and very few municipalities have adopted or use the residential code.

Response No. 8: The Department adopts the residential code as required by section 50-60-203, MCA, and utilizes it to review and approve factory-built buildings, as required by section 50-60-401, MCA. Examination of single-family dwelling plans and statewide approval of model plans, as required by section 50-60-118, MCA, is also based upon adoption of the residential code. Currently, 38 municipalities and three counties are certified to enforce building within their jurisdictional areas. Each of them adopt and use the residential code for that purpose.

Comment No. 9: A comment was received objecting to the proposed methods for determining the valuation of a building or structure, which valuation then provides the basis upon which plan review and permit fees are calculated. The comment objected to the proposed methods of utilizing cost per square foot and/or the best valuation information available to the Department to determine the applicable fees.

Response No. 9: It is not uncommon on owner-built project permit applications for the Department not to be furnished with a firm bid, contract amount, or a design professional's estimate of a preliminary cost for the project. In those cases, the Department uses the cost per square foot method of valuation and/or a reasonable proportional value to establish a reasonable valuation-based plan review/building permit fee. The Department concludes that the alternative of forcing every applicant, at the time of filing for the application, to provide a firm bid, an accepted contract amount, or design professional's preliminary estimate of cost is unreasonable, especially in light of the number of owner-built projects constructed in Montana.

Comment No. 10: A comment was received stating it was unreasonable to allow cities to establish their own permit fees and establish their own method of building valuation.

Response No. 10: Section 50-60-106(2)(g), MCA, allows certified municipalities to establish building permit fees. The statute also requires the fees to be necessary, reasonable, uniform, and directly and specifically based upon the costs of enforcing building codes. Therefore, it is necessary for municipalities to have the flexibility necessary to establish methods to determine building valuations directly related to the building permit fee schedules established by the municipalities.

Comment No. 11: A comment was received that there was no reason to make the public apply on forms provided by the

Department for the 35% refund outlined in this rule. The comment stated the Department has all the information it requires and should mail out the checks.

Response No. 11: Although the Department has all the applicable information on record necessary to issue a building permit to the applicant, it does not have the permittee's federal tax identification number or social security number. A taxpayer identification number is required for the issuance of a state warrant. The process requiring application on forms provided by the Department collects the requisite identification numbers and provides a current and correct mailing address for payment. In addition, the Department is aware of a number of cases where the entity to whom the refund is due has decided not to seek a refund. Those instances usually involve a design professional or building contractor who paid the fee on behalf of the project's owner. In some of those instances, the private sector entity's cost of sorting out the amount the underlying project owner might be due in the form of a refund appears to outweigh the value of obtaining the refund, as viewed by that business.

Comment No. 12: A comment was received regarding NEW RULE IV (ARM 24.301.142), subsection (7), concerning the certificate of occupancy and formal written approval. The comment stated these matters were presently the subject of a pending rules process before the Department and were in conflict with the building code requirements which required issuance of a certificate of occupancy.

Response No. 12: The comment is well taken and the language of NEW RULE IV (ARM 24.301.142) is modified to match the proposals in the pending administrative rules process. Section 50-60-107, MCA, does not require the state to issue a certificate of occupancy but rather describes what a certificate of occupancy, if and when issued, must certify and the legal significance of such certificate. The provisions for certificate of occupancy in the IBC do not take precedent over the statutory requirements. Since the mandatory inspections required by IBC Section 109.3 cannot be met by the state's circuit inspection program, a certificate of occupancy certifying conformance with the IBC cannot be issued. The state will continue to issue formal written approval for structures, as applicable.

Comment No. 13: A comment was received questioning the requirements for four foot footing burial for masonry and multiple story buildings when only three foot footing burial is required for single story buildings.

Response No. 13: The Department has utilized these established minimum footing burial depths for a number of years in order to assist the owner/builder who is unfamiliar with established frost depths and/or soils analysis. The

minimum established footing depths cover the majority of rural locations and provide guidance for footing depth in the absence of engineered footings and foundation walls.

Comment No. 14: A comment was received regarding the requirement for a Montana registered engineer or architect to certify or stamp the design of a monolithic slab or architectural building design. The comment stated that the stamp of any design professional from any state should be acceptable for projects in Montana.

Response No. 14: Montana licensure is a legally recognized standard for many professions practicing their profession within the State of Montana. The Legislature has specifically provided for the licensing of architects and engineers. For the same basic reason the state plumbing and electrical licensure statutes requires plumbers and electricians to be licensed in Montana, state building code regulation should require design professionals to be licensed in Montana. The Department believes that permitting the use of designs stamped by an architect or engineer not licensed in Montana could be construed as aiding or abetting the unlicensed practice of those professions.

Comment No. 15: A comment was received questioning the proposed provision which would allow building officials to waive minor building code violations when all the building codes are supposed to be life-safety codes.

Response No. 15: Section 104.10, IBC, gives the building official the authority to grant modifications for individual cases whenever there are practical difficulties involved in carrying out the provisions of the code. Such modifications may not lessen the protection of the health and safety of the public. The proposed rule NEW RULE V (ARM 24.301.146), subsection (36) restates that standard.

Comment No. 16: A comment was received questioning the validity of subsections (39) and (40) of NEW RULE V (ARM 24.301.146) relating to the statutory provisions exempting private structures. The comment stated that private garages and private storage structures are any structures where the public is not allowed. In addition, the comment stated the use of a private structure as part of a business or commercial operation was a zoning and covenant issue and not a building code issue. The commentor asserted that the building code has nothing to do with private structures that are later used for business or commercial purposes.

Response No. 16: The Department certainly recognizes the Legislature's intent in exempting certain privately owned buildings and structures from building codes regulation, as established in section 50-60-102, MCA. The statutory exemptions do not provide that buildings where the public is

not allowed are exempt from building codes regulation. In regards to the comment on zoning and covenants, Section 105.1, IBC, requires a building permit for any change of occupancy of a building or structure. Existing private structures that are proposed for use as business or commercial buildings are not exempt from building codes regulation and their use for such purposes is therefore not exclusively a zoning or covenant issue. The Department concludes that it is within the scope of its rulemaking authority to define what constitutes an owner's "private garage or private storage structure", as opposed to an owner's business-related usage.

Comment No. 17: A comment was received objecting to the definition of farm and ranch in this proposal, particularly concerning 20 and 40 acre parcels with pole barns that are farm and ranch buildings. The comment stated that a million dollar house on a piece of property would not require a building permit, but a two horse barn on the same parcel of land would require a building permit.

Response No. 17: The rule clarifies that buildings classified as Group F and Group M occupancies located, as in the comment's example, on the 20 acre parcel of land are not classified as farm and ranch buildings and are not exempt from building permits as "farm and ranch buildings." However, the two horse barn located on the same 20 acre parcel of land as the million dollar house is exempt from a building permit within the state's jurisdiction because it is treated as a private garage or storage structure associated with the residence.

Comment No. 18: A comment was received objecting to relying on a letter from the attorney for the local jurisdiction to support a conclusion by the Department that a project does not have the potential to jeopardize public health and safety. The comment stated an attorney is not a building expert and is not qualified to make a decision concerning building safety.

Response No. 18: Subsection (44) of NEW RULE V (ARM 24.301.146) applies only to buildings owned by a governmental agency. Additionally, the requirement for plans to bear the seal of a licensed design professional is relevant only if the governmental project will have a direct bearing on the public health and safety. If the Department has concluded a direct bearing on public health and safety exists, sealed plans are required. It is only when the Department has tentatively concluded that sealed plans are not required that a concurring factual-legal conclusion by the local government attorney is sought. The Department seeks this assistance from local attorneys because, ultimately, they must prosecute those who the Department believes may have violated relevant Montana statutes. If, after reviewing case-specific facts and circumstances, the local government attorneys are not inclined to prosecute a putative violation, the Department views that

position as a concurrence with its opinion that public health and safety will not be adversely affected.

/s/ KEVIN BRAUN

Kevin Braun
Rule Reviewer

/s/ WENDY J. KEATING

Wendy J. Keating, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State September 16, 2002

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the)	NOTICE OF AMENDMENT
amendment of ARM 37.85.212,)	
37.86.1004, 37.86.1406,)	
37.86.1807, 37.86.2405,)	
37.86.2505, 37.86.2605,)	
37.86.2905, 37.86.3009,)	
37.86.3011 and 37.86.3020)	
pertaining to the extension)	
of the 2.6% provider)	
reimbursement reductions and)	
the withholding of the)	
provider rate increase for)	
resource based relative value)	
scale (RBRVS) providers for)	
fiscal year 2003)	

TO: All Interested Persons

1. On August 15, 2002, the Department of Public Health and Human Services published notice of the proposed amendment of the above-stated rules at page 2165 of the 2002 Montana Administrative Register, issue number 15.

2. The Department has amended rules 37.85.212, 37.86.1004, 37.86.1406, 37.86.1807, 37.86.2405, 37.86.2505, 37.86.2605, 37.86.2905, 37.86.3009, 37.86.3011 and 37.86.3020 as proposed.

3. The Department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

COMMENT #1: The budget crisis facing the State and the Department is a legislative problem and will likely become worse in the next legislative session.

RESPONSE: The Department notes that the action taken through these rule amendments is in direct response to a legislative enactment (17-7-140, MCA) which requires agency expenditures to be reduced when budget surplus falls below the amount specified in the statute. The Department agrees that the next legislative session will be a challenge as it appears the State budget will be in a deficit position.

COMMENT #2: Medical care providers cannot keep sustaining reimbursement cuts and keep their businesses open in Montana.

RESPONSE: The Department acknowledges that cuts to reimbursement are difficult for providers. The Department has worked to minimize the effects of the budget deficit on

providers. Nevertheless, the proposed cuts are necessary to sustain the Medicaid program.

COMMENT #3: Senior Citizen Centers are receiving calls daily from elderly people who are struggling. The copayment and other changes to the Medicaid program have hit the elderly hard, many of whom are on a fixed income. Medical care providers also pass the reimbursement cuts on to the patients, so the elderly are hit twice. Because the proposed changes could also have an impact on the elderly, the Department should consider alternatives to cover the shortfall in funding.

RESPONSE: The Department agrees that reductions in Medicaid expenditures may create a hardship for the elderly, among others. For this reason, all alternatives are considered each time the Department must reduce expenditures. The Department has made every effort to distribute the reductions between programs, providers, clients, and internal operations in order to minimize the impact on any specific group.

The Department also notes that cost sharing formulas have been recently modified. Revisions shall take effect over August and September of 2002. These revisions substantially reduce the amounts payable by Medicaid clients and will simplify the administration of cost sharing.

Dawn Sliva
Rule Reviewer

Russ Cater for
Director, Public Health and
Human Services

Certified to the Secretary of State September 16, 2002.

VOLUME NO. 49

OPINION NO. 21

ATTORNEYS' FEES - Remuneration of cost of court-appointed counsel for indigent criminal defendants in justice courts;
COUNTIES - Remuneration of cost of court-appointed counsel for indigent criminal defendants in justice courts;
COURTS - Remuneration of cost of court-appointed counsel for indigent criminal defendants in justice courts;
COURTS, JUSTICE - Remuneration of cost of court-appointed counsel for indigent criminal defendants in justice courts;
MONTANA CODE ANNOTATED - Sections 3-5-901, (1), (2), (3), (4), (4)(a), (i), (ii), (A), (B), (2001), (2002), 46-8-201, (2001), (2002).

HELD: Mont Code Ann. § 3-5-901(4) specifically limits state payment of costs for court-appointed counsel for indigent criminal defendants to district court criminal cases.

September 11, 2002

Mr. Gary Ryder
Treasure County Attorney
County Courthouse
P.O. Box 72
Hysham, MT 59038-0072

You have requested my opinion concerning the following question:

Does a county or the State of Montana have the obligation to fund the legal defense expenses of an indigent individual in justice court?

The 2001 legislature substantially revised the manner in which district courts are funded to provide for state government assumption of most of the costs. The legislation, effective July 1, 2002, did not revise the funding for justice court. See Mont. Code Ann. § 3-5-901.

Mont. Code Ann. § 46-8-201, also effective July 1, 2002, regarding remuneration of court appointed counsel, provides:

Remuneration of appointed counsel.

(1) Whenever in a criminal proceeding an attorney represents or defends any person by order of the court on the ground that the person is financially unable to employ counsel, the attorney must be paid for the services a sum as a judge or justice of the state supreme court certifies to be a reasonable compensation and be reimbursed for reasonable costs incurred in the criminal proceeding.

(2) The expense of implementing subsection (1) must be paid by the state as provided in 3-5-901, except that:

(a) in proceedings solely involving the violation of a city ordinance or state statute prosecuted in a municipal or city court, the expense is chargeable to the city or town in which the proceeding arose; or

(b) when there has been an arrest by agents of the department of fish, wildlife, and parks or agents of the department of justice and the charge is prosecuted by personnel of the state agency that made the charge, the expense must be borne by the prosecuting state agency.

Mont. Code Ann. § 46-8-201 (2001) (emphasis supplied).

Mont. Code Ann. § 3-5-901 (2001) governs the state assumption of district court expenses. Subsection 1 specifically lists the district court costs that the state shall fund. Mont. Code Ann. § 3-5-901(1). Subsection 2 of the statute describes the costs that the state will not fund. Mont. Code Ann. § 3-5-901(2). Neither of these subsections addresses the issue of court-appointed counsel. Subsection 3 specifically adds the expenses related to the appellate defender program, involuntary commitment proceedings, and youth court proceedings to the list of costs that the state will assume. Mont. Code Ann. § 3-5-901(3). Finally, subsection 4 specifically addresses the issue of court-appointed counsel.

4(a) In addition to the costs assumed under the state-funded district court program, as provided in subsection (1), the state shall reimburse counties:

(i) in district court criminal cases only, expenses for indigent defense; and

(ii) in proceedings under subsection (1)(e):

(A) expenses for appointed counsel for the youth; and

(B) expenses for appointed counsel for the parent, guardian, or other person having physical or legal custody of the youth.

Mont. Code Ann. § 3-5-901(4) (emphasis supplied).

The new legislation did not address state funding for other court's expenses. Statutes must be construed or interpreted in accordance with the intent of the legislature. State v. Christensen, 265 Mont. 374, 376, 877 P.2d 468, 469 (1994). In construing a statute, I must look first to the plain meaning of the words of the statute; if the language is clear and unambiguous, no further interpretation is necessary. Id. Another fundamental rule of statutory interpretation requires that all statutes concerning a subject be read together, with

each given effect, if reasonably possible. Crist v. Segna, 191 Mont. 210, 212, 622 P.2d 1028, 1029 (1977).

Mont. Code Ann. § 46-8-210 explicitly states that the cost of remuneration for appointed counsel will be paid by the state in accordance with Mont. Code Ann. § 3-5-901. That statute specifically limits that payment to district court criminal cases only. The statutory language of these statutes when read together is clear and unambiguous. Nothing in the language indicates that the legislature intended to include the costs associated with indigent defendants in justice courts.

THEREFORE, IT IS MY OPINION:

Mont Code Ann. § 3-5-901(4) specifically limits state payment of costs for court-appointed counsel for indigent criminal defendants to district court criminal cases.

Very truly yours,

/s/ Mike McGrath
MIKE McGRATH
Attorney General

mm/pdb/jym

VOLUME NO. 49

OPINION NO. 22

BONDS - County water and sewer district general obligation bond payable by levy on real and personal property in district;

COUNTIES - County water and sewer district general obligation bond payable by levy on real and personal property in district;

PROPERTY, PERSONAL - County water and sewer district general obligation bond payable by levy on real and personal property in district;

PROPERTY, REAL - County water and sewer district general obligation bond payable by levy on real and personal property in district;

SEWERS - County water and sewer district general obligation bond payable by levy on real and personal property in district;

STATUTORY CONSTRUCTION - Construction using plain, usual, ordinary meaning; where ambiguous, legislative intent discernable from legislative history;

WATER AND SEWER DISTRICTS - County water and sewer district general obligation bond payable by levy on real and personal property in district;

MONTANA CODE ANNOTATED - Title 7, chapter 13, parts 22, 23; Title 20, chapter 9, part 4; sections 7-13-2151, -2221(3), (4), -2280 to -2282, -2301(2), -2302, (1), (2), -2303, -2331, (2), 20-9-142, 20-9-437(1), -438(1), -439(1), (1)(b), (2);

MONTANA LAWS OF 1957 - Chapter 242, sections 14(9), (10), 25-27;

MONTANA LAWS OF 1967 - Chapter 263, section 1;

MONTANA LAWS OF 1995 - Chapter 518, section 7;

MONTANA LAWS OF 1999 - Chapter 351, section 2;

REVISED CODES OF MONTANA, 1947 - Sections 16-4514(8), (9), -4526 and -4527.

HELD: General obligation bonds issued by a county water and sewer district are payable by levy on the taxable value of all real and personal property within the district.

September 16, 2002

Mr. Dennis Paxinos
Yellowstone County Attorney
P.O. Box 35025
Billings, MT 59107-5025

Dear Mr. Paxinos:

You have requested my opinion regarding the kind of property against which the Yellowstone County Board of County Commissioners may levy to pay a general obligation bond issued

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by a county water and sewer district. I have phrased the question presented as follows:

May a county water and sewer district levy against both real and personal property to pay general obligation bonds issued to finance the construction of a sanitary sewer system?

In my opinion, such a levy is required under Mont. Code Ann. § 7-13-2331(2).

I.

The Lockwood Water and Sewer District wants to issue approximately \$30,000,000 in general obligation bonds to finance the construction of pumping stations, a river crossing to connect the District to the City of Billings' wastewater treatment plant, and the installation of 8- to 36-inch trunk mains and neighborhood collection lines. The bonds may be issued only if a proposition, stating the purpose for the proposed debt, the amount of the proposed debt, the maximum term for the proposed bonds, and the land in the district to be benefited, is approved by the district electors in a regular or primary election or in a special election conducted by mail ballot.

Before it calls an election, the District would like to know how the proposed bond issue would impact its constituents. Specifically, the District needs to ascertain whether the bonds may be paid by levy against both real and personal property, or only real property, in the District.

You stated that the District's attorney believes that both real and personal property in the District are subject to levy. The District's position is that it may levy against both real and personal property to pay its general obligation bonds, because Mont. Code Ann. § 7-13-2331 requires a county water and sewer district to issue its bonds in the same manner as a school district. Mont. Code Ann. § 20-9-142 requires levy on the taxable value of all real and personal property in a school district to finance the district's final budget, including debt service for outstanding district general obligation bonds. The District sees no conflict between Mont. Code Ann. § 7-13-2331, as it incorporates by reference the law governing school bonds, including Mont. Code Ann. § 20-9-142, and Mont. Code Ann. §§ 7-13-2302 and -2303, which restrict levy to real property for payment of bonded debt caused by any revenue deficiency incurred by the district.

You also related that the District received an informal legal opinion from the Montana Department of Revenue that, pursuant to Mont. Code Ann. §§ 7-13-2302 and -2303, levy could only be "upon lands so benefited," using an assessment based on the relative area or taxable valuation of "each lot or parcel of land to be assessed." The Department surmised that, under

Mont. Code Ann. § 7-13-2331(2), the water and sewer district statutes must prevail in the event of a conflict between Mont. Code Ann. § 20-9-142 and "the express provisions of part 22 or [part 23 of Title 7, chapter 13]."

II.

In 1957, the Montana Legislature authorized the creation of county water districts and gave districts the power to incur indebtedness, issue bonds, cause taxes to be levied to pay any district obligation, set water rates to pay the principal and interest on any bonded debt, and in the event of inadequacy in district revenues, to furnish the county commissioners with a written estimate of the amount of money needed to pay the interest and principal on a bonded debt as it becomes due, along with a description of the lands benefited by such indebtedness. See 1957 Mont. Laws, ch. 242, §§ 14(9), (10), 25-27, formerly codified as Rev. Codes Mont. 1947 §§ 16-4514(8), (9), -4526 and -4527, now Mont. Code Ann. §§ 7-13-2221(3), (4), -2301(2) and -2302(1). At the time, the stated expectation was that a water district would "pay the interest and principal of its bonded debt from the revenues of the district," 1957 Mont. Laws, ch. 242, § 25, formerly, Rev. Codes Mont. 1947 § 16-4526, and only in the event of revenue deficiency in the district was the county commission empowered to levy a tax "upon the lands so benefited" sufficient for the payment of such bonded debt. Id. at § 27, formerly Rev. Codes Mont. 1947 § 16-4527, now Mont. Code Ann. § 7-13-2302(2).

In 1967, the laws governing county water districts were extended to include water and/or sewer districts. 1967 Mont. Laws, ch. 263, § 1. The statute governing a district's ratemaking power was also amended to cover "sewer service, other services and facilities," and to delete the specific declaration that bonded debt be paid from district revenues. Id., amending Rev. Codes Mont. 1947 § 16-4526.

In 1995, the 55th Montana Legislature gave county water and sewer districts the authority to issue general obligation bonds. 1995 Mont. Laws, ch. 518, § 7, codified as Mont. Code Ann. § 7-13-2331. This grant of authority was "in addition to" the powers previously granted to county water and sewer districts to finance facilities and improvements. Id., § 7(1), now Mont. Code Ann. § 7-13-2331(1). A general obligation bond could be issued by a district for up to a forty-year term and be used to pay all or part of the costs to acquire, construct or improve district facilities. Id. The Legislature further directed that district general obligation bonds "be authorized, sold, and issued, with provisions for their payment, in the manner and subject to the conditions prescribed for bonds of school districts in Title 20, chapter 9, part 4, except to the extent that those conditions conflict with the express provisions of part 22 or this part." Id., § 7(2), now Mont. Code Ann. § 7-13-2331(2). Finally, the

Legislature provided that a district could impose rates or other charges for the use of facilities financed in whole or in part by general obligation bonds, "if the revenue from the rates or charges is used to abate taxes that have been levied to pay the principal or interest on the general obligation bonds or is used to pay the principal or interest on other bonded indebtedness of the district." Id., § 7(3), now Mont. Code Ann. § 7-13-2331(3).

In 1999, the 57th Legislature gave county water and sewer districts additional authority to levy a special assessment, in lieu of imposition of rates and charges, to pay the costs of any district capital improvements. 1999 Mont. Laws, ch. 351, § 2, codified as Mont. Code Ann. § 7-13-2280. Such an assessment could be imposed by board resolution, using assessment methods for rural improvement districts as prescribed in Mont. Code Ann. § 7-12-2151, following a hearing and possible written protest by district property owners to the method of assessment selected. Id., §§ 2-4, codified as Mont. Code Ann. §§ 7-13-2280 through -2282.

III.

Your opinion request requires construction of Mont. Code Ann. § 7-13-2331, particularly subsection (2), which provides:

(2) General obligation bonds issued pursuant to this section must be authorized, sold, and issued, with provisions for their payment, in the manner and subject to the conditions prescribed for bonds of school districts in Title 20, chapter 9, part 4, except to the extent that those conditions conflict with the express provisions of part 22 or this part.

In interpreting a statute, I must "look first to the plain meaning of the words it contains" and give those words "their usual and ordinary meaning." Duck Inn, Inc. v. Montana State University-Northern, 285 Mont. 519, 523; 949 P.2d 1179, 1181 (1997).

Subsection (2) clearly states that the "provisions for [the] payment" of general obligation bonds issued by a county water and sewer district be "in the manner and subject to the conditions prescribed for bonds of school districts in Title 20, chapter 9, part 4," unless those conditions--meaning the conditions prescribed for school district bonds--"conflict with the express provisions of part 22 or [part 23 of Title 7, chapter 13]."

On its face, the Legislature's intent is evident. Barring a conflict between school district bond statutes and an "express provision" of the statutes governing county water and sewer district statutes, the former controls. In event of a

conflict between the school bonding statutes and an "express provision" of Title 7, chapter 13, parts 22 or 23, the latter controls.

Thus, the underlying question to be answered is whether there is a conflict between the school district bond statutes and an express provision of the county water and sewer statutes. The answer to that question lies in comparison of the various statutes and careful assessment of any apparent contradiction.

Review must begin with the statutes that prescribe or relate to the conditions of payment of school district bonds. Those statutes may be summarized as follows:

a. "[t]he full faith, credit, and taxable resources of a school district issuing [general obligation] bonds under the provisions of this title are pledged for the repayment of the bonds with interest" Mont. Code Ann. § 20-9-437(1);

b. the trustees of each school district having outstanding bonds must "include in the debt service fund of the final budget adopted in accordance with 20-9-133 an amount of money that is necessary to pay the interest and the principal amount becoming due during the ensuing school fiscal year for each series or installment of bonds, according to the terms and conditions of the bonds and the redemption plans of the trustees." Mont. Code Ann. § 20-9-438(1);

c. the county superintendent must compute the net debt service fund levy requirement by "subtract[ing] the total amount available to reduce the property tax"--including, inter alia, any debt service fund end-of-the-year fund balance, anticipated interest to be earned by the investment of debt service cash or bond proceeds, and any other money, including money from federal sources, anticipated by the trustees to be available in the debt service fund during the ensuing school fiscal year from legally authorized fund transfers or rental income--"from the final budget for the debt service fund as established [by the trustees]." Mont. Code Ann. § 20-9-439(1)(b);

d. the county commissioners must levy the net debt service fund levy requirement reported by the county superintendent "in accordance with 20-9-142." Mont. Code Ann. § 20-9-439(2); and,

e. the "county commissioners [must] fix and levy on all the taxable value of all the real and personal property within the district all district and county taxation required to finance, within the limitations provided by law, the final budget." Mont. Code Ann. § 20-9-142. (Emphasis supplied.)

In accordance with the foregoing statutes, school district bonds are clearly payable by levy on the taxable value of all

real and personal property within a school district. Absent conflict with one or more "express" provisions of Title 7, chapter 13, parts 22 or 23, that same condition necessarily applies to payment of general obligation bonds issued by a county water and sewer district.

Webster's Ninth New Collegiate Dictionary 438 (9th ed. 1988) defines the adjective "express" as "1 a: directly, firmly and explicitly stated . . . b: EXACT, PRECISE." Thus, the limitation of Mont. Code Ann. § 7-13-2331(2) would only come into play if one or more provisions of part 22 or 23 of title 7, chapter 13, positively and unmistakably declared a contrary manner or condition for payment of general obligation bonds.

While several statutes in parts 22 and 23 of title 7, chapter 13, generally refer to bonded indebtedness incurred by county water and sewer districts, none of the statutes (except for Mont. Code Ann. § 7-13-2331) explicitly deal with the payment of general obligation bonds or refer to general obligation bonds as a specific type of bonded indebtedness. Therefore, I find no conflict between an express provision of part 22 or 23 and the statutes prescribing the manner and conditions for payment of school district bonds.

Mont. Code Ann. § 7-13-2221 permits a county water and sewer district to "(3) borrow money and incur indebtedness and issue bonds or other evidence of indebtedness and refund or retire any indebtedness or lien that may exist against the district or property of the district; and (4) cause taxes to be levied in the manner provided for in part 23 and this part for the purpose of paying any obligation of the district and to accomplish the purposes of part 23 and this part in the manner provided in part 23 and this part." Certainly, no incompatibility is presented where the statute expressly sanctions taxes to be levied in the manner provided for in part 23, including, as directed in Mont. Code Ann. § 7-13-2331(2), provision for payment of general obligation bonds "in the manner and subject to the conditions prescribed for bonds of school districts in Title 20, chapter 9, part 4"

Mont. Code Ann. § 7-13-2301(2) requires a county water and sewer district's board of directors to fix the rates, fees or other charges for the services, facilities and benefits directly afforded by the facilities, to "be sufficient in each year to provide income and revenue adequate . . . for: . . . (c) the payment of principal and interest on any bonded or other indebtedness of the district." Only if the revenues of the district become inadequate to pay the interest or principal of any bonded debt as it becomes due must (a) the district's board of directors furnish to the board of county commissioners and the auditor, an estimate in writing of the amount of money required by the district for the payment of the principal of or interest on any bonded debt as it becomes due, Mont. Code Ann. § 7-13-2302(1)(a); and, (b) the board of

county commissioners "levy upon the lands so benefited and cause to be collected the proportionate share to be borne by the land located in their county of a tax sufficient for the payment thereof [any bonded debt not yet fully paid]." Mont. Code Ann. § 7-13-2302(2)(a). The amount of the levy with respect to a particular parcel of land must be predicated on either the ratio of such parcel's acreage to the total assessed acreage or the ratio of the parcel's taxable valuation to the total valuation of assessed lands. Mont. Code Ann. § 7-13-2303(1).

Read together, Mont. Code Ann. §§ 7-13-2301 through -2303 set the manner and conditions for payment of a bonded debt that is primarily based on revenues or fees generated from district services and contingently backed by a tax levy upon lands benefited by the district. These statutes do not expressly speak to the manner and conditions for payment of a bonded debt based on a general obligation.

Such a construction is not only consistent with the plain language of these statutes, but to the extent any ambiguity is created by references throughout these provisions to "any bonded debt," I must adopt the interpretation most consistent with the evident legislative intent. Delaware v. K-Decorators, Inc., 1999 MT 13, ¶ 33, 293 Mont. 97, 973 P.2d 818, (1999). Where ambiguity exists, the Montana Supreme Court has approved resort to legislative history materials for evidence of legislative intent. Dorn v. Board of Trustees of Billings Sch. Dist. No. 2, 203 Mont. 136, 144, 661 P.2d 426, 430 (1983). Minutes from the hearing before the Senate Local Government Committee on HB 308 include an exhibit that was described as a summary of HB 308's provisions prepared by a private attorney who acted as the scribe for the people who worked on the bill. Mins., Senate Local Gov't Comm., March 9, 1995, p. 9 of 11. The summary described then section 5 of the bill, later enacted and codified as Mont. Code Ann. § 7-13-2331, as follows:

[It] would authorize the district, upon approval of the voters of the district, to issue general obligation bonds to pay for the costs of capital improvements. The current bonding provisions of the county water and sewer district law allow the issuance of what are referred to as tax backed revenue bonds. The use of a general obligation mechanism can be of value to certain districts that simply want to spread the costs of the improvements on an ad valorem property tax basis and collect these amounts twice a year. This seems particularly important to smaller districts with minimal staffs for whom monthly, quarter bills are difficult to send and collect, and the calculation of charges based on benefit may appear too onerous. It should be noted that general obligation bonds can only be

issued if approved by the voters in the same manner as school district bonds, and it would be clear in the election proceedings that the bonds would be general obligations payable from a tax levy, rather than revenues of the system.

Ex. 4, p. 4, Mins., Senate Local Gov't Comm., March 9, 1995 (emphasis added).

This explanation largely mirrors descriptions previously used by the Montana Supreme Court to distinguish revenue bonds from general obligation bonds, to wit: "There is a long history in Montana of the financing of various projects by revenue bonds as distinguished from general obligation bonds payable out of ad valorem property tax receipts." State ex rel. Ward v. Anderson, 158 Mont. 279, 284, 491 P.2d 868, 871 (1971), quoting from Fickes v. Missoula County, 155 Mont. 258, 264, 470 P.2d 287, 290 (1970).

This explanation also fully comports with the requirements of school district bonding statutes incorporated by reference in Mont. Code Ann. § 7-13-2331(2). As noted previously, Mont. Code Ann. § 20-9-437(1) pledges the "full faith, credit, and taxable resources of a school district" for the repayment of general obligation bonds issued by a school district, and Mont. Code Ann. § 20-9-142 requires the board of county commissioners to "fix and levy on all the taxable value of all the real and personal property within the district all district and county taxation required to finance" a school district's final budget, including the debt service fund for the payment of school bonds.

THEREFORE, IT IS MY OPINION:

General obligation bonds issued by a county water and sewer district are payable by levy on the taxable value of all real and personal property within the district.

Very truly yours,

/s/ Mike McGrath
MIKE McGRATH
Attorney General

mm/bgn/jym

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee:

- ▶ Department of Agriculture;
- ▶ Department of Commerce;
- ▶ Department of Labor and Industry;
- ▶ Department of Livestock;
- ▶ Department of Public Service Regulation; and
- ▶ Office of the State Auditor and Insurance Commissioner.

Education and Local Government Interim Committee:

- ▶ State Board of Education;
- ▶ Board of Public Education;
- ▶ Board of Regents of Higher Education; and
- ▶ Office of Public Instruction.

Children, Families, Health, and Human Services Interim Committee:

- ▶ Department of Public Health and Human Services.

Law and Justice Interim Committee:

- ▶ Department of Corrections; and
- ▶ Department of Justice.

Revenue and Transportation Interim Committee:

- ▶ Department of Revenue; and
- ▶ Department of Transportation.

State Administration, and Veterans' Affairs Interim Committee:

- ▶ Department of Administration;
- ▶ Department of Military Affairs; and
- ▶ Office of the Secretary of State.

Environmental Quality Council:

- ▶ Department of Environmental Quality;
- ▶ Department of Fish, Wildlife, and Parks; and
- ▶ Department of Natural Resources and Conservation.

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is PO Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA
AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions: Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

- | | |
|-------------------------------------|---|
| Known
Subject | 1. Consult ARM topical index.
Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute
Number and
Department | 2. Go to cross reference table at end of each title which lists MCA section numbers and corresponding ARM rule numbers. |

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 2002. This table includes those rules adopted during the period July 1, 2002 through September 30, 2002 and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 2002, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 2001 and 2002 Montana Administrative Registers.

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BOARD APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the *Montana Administrative Register* a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments effective in August 2002, appear. Vacancies scheduled to appear from October 1, 2002, through December 31, 2002, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of September 3, 2002.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

BOARD AND COUNCIL APPOINTEES FROM AUGUST 2002

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Landscape Architects (Labor and Industry) Mr. Robert Broughton Victor Qualifications (if required): licensed landscape architect	Governor	reappointed	8/19/2002 7/1/2006
Board of Veterinary Medicine (Labor and Industry) Dr. Jean Allbright Billings Qualifications (if required): licensed veterinarian	Governor	Lee	8/7/2002 7/31/2007
Drought Advisory Committee (Natural Resources and Conservation) Ms. Gina Loss Great Falls Qualifications (if required): non-voting representative of the federal government	Governor	Mielke	8/13/2002 0/0/0
Family Education Savings Oversight Committee (Commissioner of Higher Education) Mr. Ed Jasmin Bigfork Qualifications (if required): representative of the Board of Regents	Governor	Roehm	8/13/2002 7/1/2003
House District 10 (House) Sen. Thomas F. Keating Billings Qualifications (if required): none specified	County Commissioners	Peterson	8/1/2002 1/1/2003
Montana Historical Society Board of Trustees (Historical Society) Mr. Steve Browning Helena Qualifications (if required): public member	Governor	reappointed	8/9/2002 7/1/2007

BOARD AND COUNCIL APPOINTEES FROM AUGUST 2002

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Historical Society Board of Trustees (Historical Society) cont.			
Ms. Mary Murphy Bozeman	Governor	reappointed	8/9/2002 7/1/2007
Qualifications (if required): historian			
Mr. Don Wetzel Bozeman	Governor	reappointed	8/9/2002 7/1/2007
Qualifications (if required): public member			
Montana Wheat and Barley Committee (Agriculture)			
Mr. Daniel Kidd Big Sandy	Governor	reappointed	8/21/2002 8/20/2005
Qualifications (if required): representative of District IV and a Republican			
Mr. Leonard Schock Vida	Governor	reappointed	8/21/2002 8/20/2005
Qualifications (if required): representative of District VII and a Republican			
State Emergency Response Commission (Military Affairs)			
Ms. Jolene Jacobson Pablo	Governor	Jackson	8/19/2002 10/1/2003
Qualifications (if required): representative of the Tribal Emergency Response Committee			
Youth Justice Council (Justice)			
Ms. Beverley Boyd Helena	Governor	Maddux	8/7/2002 6/15/2003
Qualifications (if required): representative of the youth court system			

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2002 through DECEMBER 31, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
AIDS Advisory Council (Public Health and Human Services) Mr. Jesse Sherratt, Helena Qualifications (if required): student representative	Governor	11/15/2002
Board of Occupational Therapists (Commerce) Ms. Elspeth Richards, Missoula Qualifications (if required): occupational therapist	Governor	12/31/2002
Ms. Barbara Tamietti, Stockett Qualifications (if required): public member	Governor	12/31/2002
Board of Outfitters (Commerce) Ms. Jennifer J. Cote, Missoula Qualifications (if required): sportsperson	Governor	10/1/2002
Mr. Wayne L. Underwood, Billings Qualifications (if required): sportsperson	Governor	10/1/2002
Mr. Mel Montgomery, Lima Qualifications (if required): big game outfitter	Governor	10/1/2002
Mr. Leslie K. Dolezal, Billings Qualifications (if required): public member	Governor	10/1/2002
Board of Speech-Language Pathologists and Audiologists (Commerce) Ms. Marilyn Thaden, Miles City Qualifications (if required): speech-language pathologist	Governor	12/31/2002
Ms. Jennifer L. Hartze, Belgrade Qualifications (if required): audiologist	Governor	12/31/2002

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2002 through DECEMBER 31, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Building Codes Council (Commerce) Mr. Fred Flanders, Helena Qualifications (if required): representative of the public	Governor	10/1/2002
Mr. Daniel Prill, Great Falls Qualifications (if required): practicing professional engineer	Governor	10/1/2002
Mr. Robert J. Karhu, Helena Qualifications (if required): practicing architect	Governor	10/1/2002
Mr. Mike Skinner, Helena Qualifications (if required): representative of the manufactured housing industry	Governor	10/1/2002
Mr. Joe Wolfe, Helena Qualifications (if required): representative of the State Electrical Board	Governor	10/1/2002
Mr. Terry Phillips, Helena Qualifications (if required): state fire marshal	Governor	10/1/2002
Mr. Derek J. Brown, Helena Qualifications (if required): representative of the home building industry	Governor	10/1/2002
Mr. Dick Grover, Missoula Qualifications (if required): representative of the State Plumbing Board	Governor	10/1/2002
Mr. Jeffrey Jenkins, Great Falls Qualifications (if required): municipal building inspector	Governor	10/1/2002
Mr. Joe Hansen, Bozeman Qualifications (if required): representative of the building contractor industry	Governor	10/1/2002

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2002 through DECEMBER 31, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Building Codes Council (Commerce) cont. Mr. Howard Reid, Helena Qualifications (if required): representative of the Department of Public Health and Human Services	Governor	10/1/2002
Governor's Advisory Council on Disability (Administration) Ms. Katherine Kountz, Helena Qualifications (if required): ex-officio member	Governor	11/14/2002
Ms. June Hermanson, Billings Qualifications (if required): public member	Governor	11/14/2002
Ms. Ladonna Fowler, Polson Qualifications (if required): public member	Governor	11/14/2002
Ms. Mary Morrison, Missoula Qualifications (if required): public member	Governor	11/14/2002
Mr. Michael Regnier, Missoula Qualifications (if required): public member	Governor	11/14/2002
Ms. Shelley Laing, Kalispell Qualifications (if required): public member	Governor	11/14/2002
Mr. Gene Haire, Helena Qualifications (if required): public member	Governor	11/14/2002
Mr. David Diehl, East Helena Qualifications (if required): public member	Governor	11/14/2002

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2002 through DECEMBER 31, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Governor's HIV/AIDS Advisory Council (Public Health and Human Services) Mr. Frank Gary, Butte Qualifications (if required): public member	Governor	11/15/2002
Mr. Steven C. Yeakel, Helena Qualifications (if required): public member	Governor	11/15/2002
Ms. Verbena Savior, Poplar Qualifications (if required): Native American	Governor	11/15/2002
Mr. David Herrera, Billings Qualifications (if required): public member	Governor	11/15/2002
Ms. Rita Munzenrider, Missoula Qualifications (if required): public member	Governor	11/15/2002
Ms. Teresa Louise Dunn, Whitefish Qualifications (if required): public member	Governor	11/15/2002
Sen. John Bohlinger, Billings Qualifications (if required): legislator	Governor	11/15/2002
Mr. Kevin Petersen, Clancy Qualifications (if required): public member	Governor	11/15/2002
Mr. Fred Zaino, Conrad Qualifications (if required): public member	Governor	11/15/2002
Ms. Kim Ackerman, Helena Qualifications (if required): public member	Governor	11/15/2002

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2002 through DECEMBER 31, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Governor's HIV/AIDS Advisory Council (Public Health and Human Services) cont. Ms. Annie Tavary, Helena Qualifications (if required): public member	Governor	11/15/2002
Mr. Jack Preston, Lincoln Qualifications (if required): public member	Governor	11/15/2002
Mr. Jeff Lovely, Helena Qualifications (if required): public member	Governor	11/15/2002
Sister Mary Vincentia Maronick, Billings Qualifications (if required): public member	Governor	11/15/2002
Governor's Income Tax Advisory Council (Revenue) Mr. Leo Berry, Helena Qualifications (if required): representing Association of Montana Retired Public Employees	Governor	12/31/2002
Rep. Chase Hibbard, Helena Qualifications (if required): representing Montana Taxpayers Association	Governor	12/31/2002
Mr. Jon Marchi, Polson Qualifications (if required): representing Montana Ambassadors	Governor	12/31/2002
Rep. Trudi Schmidt, Great Falls Qualifications (if required): legislator	Governor	12/31/2002
Sen. Bob DePratu, Whitefish Qualifications (if required): legislator	Governor	12/31/2002

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2002 through DECEMBER 31, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Governor's Income Tax Advisory Council (Revenue) cont. Sen. Jon Tester, Big Sandy Qualifications (if required): legislator	Governor	12/31/2002
Rep. Karl A. Waitschies, Peerless Qualifications (if required): legislator	Governor	12/31/2002
Mr. Kurt Alme, Helena Qualifications (if required): representative of the Governor's Office	Governor	12/31/2002
Mr. Jerry Driscoll, Helena Qualifications (if required): representing AFL-CIO	Governor	12/31/2002
Mr. Scott Mendenhall, Whitehall Qualifications (if required): representing Jefferson County Local Development Corporation	Governor	12/31/2002
Mr. Tim Bartz, Helena Qualifications (if required): accountant	Governor	12/31/2002
Mr. Doug Young, Bozeman Qualifications (if required): academic	Governor	12/31/2002
Mr. Lary Johnson, Kalispell Qualifications (if required): accountant	Governor	12/31/2002
Ms. Karen Olson, Sidney Qualifications (if required): representing Chamber of Commerce	Governor	12/31/2002

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2002 through DECEMBER 31, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Governor's Local Option Tourist Tax Advisory Council (Revenue) Mayor Larry J. Bonderud, Shelby Qualifications (if required): representing local government - city	Governor	12/31/2002
Sen. Jon Ellingson, Missoula Qualifications (if required): legislator	Governor	12/31/2002
Rep. Bob Gilbert, Sidney Qualifications (if required): representing Rosebud County	Governor	12/31/2002
Ms. Betty T. Lund, Hamilton Qualifications (if required): representing local government - county	Governor	12/31/2002
Ms. Maureen Averill, Bigfork Qualifications (if required): representing Tourism Advisory Council	Governor	12/31/2002
Sen. Wm. E. (Bill) Glaser, Huntley Qualifications (if required): legislator	Governor	12/31/2002
Mr. John Lawton, Great Falls Qualifications (if required): representing local government - city	Governor	12/31/2002
Rep. Joe McKenney, Great Falls Qualifications (if required): legislator	Governor	12/31/2002
Rep. Ralph Lenhart, Glendive Qualifications (if required): legislator	Governor	12/31/2002
Ms. Carol Brooker, Plains Qualifications (if required): representing local government - county	Governor	12/31/2002

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2002 through DECEMBER 31, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Governor's Local Option Tourist Tax Advisory Council (Revenue) cont. Mr. Kurt Alme, Helena Qualifications (if required): representative of the Governor's Office	Governor	12/31/2002
Mr. Evan Barrett, Butte Qualifications (if required): representing Butte Local Development Corporation	Governor	12/31/2002
Ms. Marti Bara, Helena Qualifications (if required): representing Montana Innkeepers Association	Governor	12/31/2002
Mr. Don Hofmann, Ismay Qualifications (if required): representing Montana Farm Bureau Federation	Governor	12/31/2002
Governor's Tourist Tax Advisory Council (Revenue) Mr. Bob Fletcher, Bozeman Qualifications (if required): representing Montana Tavern Association	Governor	12/31/2002
Mr. Dennis M. Taylor, Billings Qualifications (if required): representing local government - city	Governor	12/31/2002
Sen. Emily Stonington, Bozeman Qualifications (if required): legislator	Governor	12/31/2002
Rep. Robert R. Story, Jr., Park City Qualifications (if required): legislator	Governor	12/31/2002
Mr. Kelly Flynn, Townsend Qualifications (if required): representing Montana Outfitters and Guides	Governor	12/31/2002
Rep. Ron Devlin, Terry Qualifications (if required): legislator	Governor	12/31/2002

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2002 through DECEMBER 31, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Governor's Tourist Tax Advisory Council (Revenue) cont. Rep. Ron Erickson, Missoula Qualifications (if required): legislator	Governor	12/31/2002
Mr. Webb Brown, Helena Qualifications (if required): representing Chamber of Commerce	Governor	12/31/2002
Mr. Kurt Alme, Helena Qualifications (if required): Governor's Office representative	Governor	12/31/2002
Ms. Mary Whittinghill, Helena Qualifications (if required): representing Montana Taxpayers Association	Governor	12/31/2002
Mr. Bill Howell, West Yellowstone Qualifications (if required): representing Montana Restaurant Association	Governor	12/31/2002
Mr. Dean Harman, Bainville Qualifications (if required): representing local government - county	Governor	12/31/2002
Mr. Dale Duff, Whitefish Qualifications (if required): representing Rocky Mountain Transportation Inc.	Governor	12/31/2002
Ms. Nancy Schlepp, Bozeman Qualifications (if required): representing Montana Farm Bureau Federation	Governor	12/31/2002
Mr. Don Serba, Missoula Qualifications (if required): representing Pulp and Paperworks Resource Council	Governor	12/31/2002
Mr. George Willett, Neihart Qualifications (if required): public member	Governor	12/31/2002

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2002 through DECEMBER 31, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Historical Society Preservation Review Board (Historical Society) Ms. Theo Hugs, Fort Smith Qualifications (if required): historian	Governor	10/1/2002
Mr. Douglas Johnson, Hamilton Qualifications (if required): administrator of historic property	Governor	10/1/2002
Lewis and Clark Bicentennial Commission (Historical Society) Mr. Darrell Kipp, Browning Qualifications (if required): member of a Montana Indian tribe	Governor	10/1/2002
Ms. Betty Stone, Glasgow Qualifications (if required): public member	Governor	10/1/2002
Mr. Homer Staves, Billings Qualifications (if required): public member	Governor	10/1/2002
Montana Alfalfa Seed Committee (Agriculture) Mr. James Whitmer, Bloomfield Qualifications (if required): alfalfa seed grower and rearing alfalfa leaf-cutting bees	Governor	12/21/2002
Mr. David Sagmiller, Ronan Qualifications (if required): alfalfa seed seller	Governor	12/21/2002
Mr. John Mehling, Hardin Qualifications (if required): alfalfa seed grower	Governor	12/21/2002
Montana Higher Education Student Assistance Corporation (Education) Ms. Shirley Warehime, Helena Qualifications (if required): at large director	Board of Regents	12/31/2002

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2002 through DECEMBER 31, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Historical Records Advisory Council (Historical Society) Ms. Molly Miller, Helena Qualifications (if required): acting state archivist	Governor	10/18/2002
Ms. Anne L. Foster, Huntley Qualifications (if required): public member	Governor	10/18/2002
Ms. Ellen Crain, Butte Qualifications (if required): public member	Governor	10/18/2002
Ms. Jodi L. Allison-Bunnell, Missoula Qualifications (if required): public member	Governor	10/18/2002
Ms. Kathy Mosdal O'Brien, Billings Qualifications (if required): public member	Governor	10/18/2002
Mr. Kim Allen Scott, Bozeman Qualifications (if required): public member	Governor	10/18/2002
Ms. Judy Ellinghausen, Great Falls Qualifications (if required): public member	Governor	10/18/2002
Ms. Lory Morrow, Helena Qualifications (if required): public member	Governor	10/18/2002
Motor Fuel Tax Collection Enforcement and Refund Advisory Council (Transportation) Sen. Barry "Spook" Stang, Helena Qualifications (if required): public member	Governor	12/31/2002
Mr. Steve Pilcher, Helena Qualifications (if required): public member	Governor	12/31/2002

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2002 through DECEMBER 31, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Motor Fuel Tax Collection Enforcement and Refund Advisory Council (Transportation) cont. Sen. Dan W. Harrington, Butte Qualifications (if required): legislator	Governor	12/31/2002
Mr. David A. Galt, Helena Qualifications (if required): representative of state government	Governor	12/31/2002
Sen. Ric Holden, Glendive Qualifications (if required): legislator	Governor	12/31/2002
Rep. Ron Devlin, Terry Qualifications (if required): legislator	Governor	12/31/2002
Mr. Bob Stephens, Dutton Qualifications (if required): public member	Governor	12/31/2002
Mr. Patrick McNulty, Buffalo Qualifications (if required): public member	Governor	12/31/2002
Mr. Keith Olson, Kalispell Qualifications (if required): public member	Governor	12/31/2002
Ms. Gail Abercrombie, Helena Qualifications (if required): public member	Governor	12/31/2002
Mr. Wes Choc, Helena Qualifications (if required): public member	Governor	12/31/2002
Mr. Cary Hegreberg, Helena Qualifications (if required): public member	Governor	12/31/2002

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2002 through DECEMBER 31, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Motor Fuel Tax Collection Enforcement and Refund Advisory Council (Transportation) cont. Rep. John L. Musgrove, Havre Qualifications (if required): legislator	Governor	12/31/2002
Ms. Ronna Christman, Helena Qualifications (if required): public member	Governor	12/31/2002
Noxious Weed Seed Free Forage Advisory Council (Agriculture) Mr. W. Ralph Peck, Helena Qualifications (if required): director	Director	10/11/2002
Mr. Harry Woll, Kalispell Qualifications (if required): forage producer	Director	10/11/2002
Mr. LaMonte Schnur, Townsend Qualifications (if required): forage producer	Director	10/11/2002
Mr. Don Walker, Glendive Qualifications (if required): forage producer	Director	10/11/2002
Mr. Dennis Perry, Choteau Qualifications (if required): feed pellets/cubes products	Director	10/11/2002
Mr. Bob McNeill, Dillon Qualifications (if required): outfitters and guides	Director	10/11/2002
Mr. Dennis Cash, Bozeman Qualifications (if required): ex officio	Director	10/11/2002

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2002 through DECEMBER 31, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Noxious Weed Seed Free Forage Advisory Council (Agriculture) cont. Mr. Ray Ditterline, Bozeman Qualifications (if required): ex officio	Director	10/11/2002
Mr. Clay Williams, Livingston Qualifications (if required): weed districts	Director	10/11/2002
Mr. Wayne Maughn, Fort Benton Qualifications (if required): livestock/agriculture	Director	10/11/2002
Ms. Marcy Mack, Pablo Qualifications (if required): weed districts	Director	10/11/2002
Small Business Compliance Assistance Advisory Council (Environmental Quality) Ms. Sandy Newton, Helena Qualifications (if required): public member	Governor	10/1/2002
Ms. Karen Williams, Helena Qualifications (if required): public member	Governor	10/1/2002
State Employee Group Benefits Advisory Council (Administration) Mr. Thomas Schneider, Helena Qualifications (if required): none specified	Director	12/31/2002
Mr. Dale Taliafero, Helena Qualifications (if required): none specified	Director	12/31/2002
Ms. Mary Dalton, Helena Qualifications (if required): none specified	Director	12/31/2002
Mr. Steve Barry, Helena Qualifications (if required): none specified	Director	12/31/2002

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2002 through DECEMBER 31, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
State Employee Group Benefits Advisory Council (Administration) cont. Sen. Duane Grimes, Clancy Qualifications (if required): none specified	Director	12/31/2002
Mr. John W. Northey, Helena Qualifications (if required): none specified	Director	12/31/2002
Mr. John McEwen, Helena Qualifications (if required): none specified	Director	12/31/2002
Mr. Todd Lovshin, Helena Qualifications (if required): none specified	Director	12/31/2002
Mr. Richard Cooley, Helena Qualifications (if required): none specified	Director	12/31/2002
Ms. Barbara Smith, Helena Qualifications (if required): none specified	Director	12/31/2002
Mr. Monte Brown, Helena Qualifications (if required): none specified	Director	12/31/2002
Ms. Amy Carlson, Helena Qualifications (if required): none specified	Director	12/31/2002
Water and Waste Water Operators' Advisory Council (Environmental Quality) Mr. Roger Thomas, Billings Qualifications (if required): wastewater treatment plant operator	Governor	10/16/2002